

Takaful Act 1984



LAWS OF MALAYSIA

Act 312

Takaful Act 1984

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An Act to provide for the regulation of takaful business in Malaysia and for other purposes relating to or connected with takaful.

[1st January 1985]

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PART I

PRELIMINARY

Short title. 1. This Act may be cited as the Takaful Act 1984.

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

“Accountant General” means the Accountant General, Malaysia;

“accounting period”, in relation to any takaful operator, means the period for which the operator makes up the accounts of the takaful business carried on by him in Malaysia;

“adjuster” means any person who for compensation, fee, commission or salary investigates and negotiates settlement of claims arising under takaful contracts, solely on behalf of either the takaful operator or the participant;

“broker” means any individual, firm or company who for compensation as an independent contractor, in any manner solicits, negotiates or procures takaful contracts or the renewal or continuance thereof on behalf of the participant other than himself;

Ord. 61/58. “Central Bank” means the Central Bank of Malaysia established by the Central Bank of Malaysia Ordinance 1958;

Act A699.

“contribution” means takaful instalment payable by participants;

*Act 287.
 Sabah 3/58.
 Sarawak Cap. 66.* “Co-operative Societies Act” means the Co-operative Societies Act 1948, or the Co-operative Societies Ordinance 1958 of Sabah, or the Co-operative Societies Ordinance of Sarawak, as the case may require;

“Director General” means the Director General of Takaful appointed under section 54;

“family solidarity” means takaful for the benefit of the individual and his family;

“operator” means a company or a society which carries on takaful business;

“participant” includes, where a certificate has been assigned, the assignee for the time being and, where they are entitled as against the takaful operator to the benefit of the certificate, the personal representatives of a deceased participant;

“principal officer” means a person, by whatever designation called, appointed by a takaful operator and charged with the responsibility of managing the affairs of the operator;

“qualified actuary” means a Fellow of the Institute of Actuaries in England, or a Fellow of the Faculty of Actuaries in Scotland, or a Fellow of the Society of Actuaries in America, or such other person as may be prescribed by the Minister;

“regulations” means regulations made by the Minister under this Act;

“re-takaful” means an arrangement consistent with sound takaful principles for re-takaful of liabilities in respect of risks incurred or to be incurred by the takaful operator in the course of his carrying on takaful business;

“re-takaful’s deposit” means an amount deposited with or retained by a takaful operator by way of security for the performance by the re-takaful operator of contracts undertaking liabilities incurred by the takaful operator;

“statutory balance-sheet” and “statutory valuation” means respectively a balance-sheet lodged with the Director General in order to comply with subsection (1) of section 41, and a valuation of which the results are shown in a valuation balance-sheet lodged with him on an actuarial investigation made in order to comply with subsection (1) of section 42 and—

- (a) any reference to the last statutory balance-sheet or to the last statutory valuation shall be construed as reference to that last prepared or made and not superseded by the arrival of the data as at which another is to be prepared or made; and
- (b) any reference to there being shown in a statutory balance-sheet or on a statutory valuation a surplus of assets over liabilities of a takaful fund shall be construed accordingly by reference to the prescribed form of balance-sheet or valuation balance-sheet and to the rules to be followed under this Act in preparing it;

“the Register” means the register of takaful certificates established by a takaful operator under section 15;

“takaful” means a scheme based on brotherhood, solidarity and mutual assistance which provides for mutual financial aid and assistance to the participants in case of need whereby the participants mutually agree to contribute for that purpose;

“takaful benefits” includes any benefit, pecuniary or not which is secured by a takaful certificate, and “pay” and other expressions, where used in relation to takaful benefits, shall be construed accordingly;

“takaful business” means business of takaful whose aims and operations do not involve any element which is not approved by the Syariah;

“takaful certificate” includes any contract of takaful for family solidarity business or general business whether or not embodied in or evidenced by an instrument in the form of a certificate, and references to issuing a certificate shall be construed accordingly. References to a certificate of a takaful operator include any certificate in respect of which the operator is under any liability, whether the certificates were issued by the operator or the liability was transferred to the operator from another;

“takaful operator”, “takaful agent” and “takaful broker” means a person who carries on takaful business as takaful operator, takaful agent and takaful broker respectively.

Classification of
takaful business,
and construction of
references to
matters connected
with takaful.

3. (1) For the purposes of this Act—

(a) takaful business shall be divided into two classes—

(i) family solidarity business which, in addition to all takaful business concerned with solidarity certificates shall include, in the case of any takaful operator, any type of takaful business carried on as incidental only to the operator’s other solidarity business; and

(ii) general business, that is to say, all takaful business which is not family solidarity business,

and the re-takaful of liabilities, under takaful certificates shall be treated as takaful business of the class and type to which the certificates would have belonged if they have been issued by the re-takaful operator;

(b) references to carrying on takaful business include the carrying it on through an agent, or as agent;

(c) the operation, otherwise than for profit, of a scheme or arrangement relating to service in particular offices or employments, and having for its objects or one of its objects to make provision in respect of persons serving therein against future retirement or partial retirement, or against future termination of service through death or disability, or against similar matters, shall not be treated as carrying on the business of takaful; and

13/66. (d) no society registered under the Societies Act 1966 shall be deemed to be a takaful operator, and no agent for such a society shall as such be deemed to be a takaful agent; nor shall references in this Act to a certificate or contract of takaful apply to any certificate or contract whereby a takaful is effected with such a

society.

PART II

CONDUCT OF TAKAFUL BUSINESS

General restriction on takaful operators

Requirements for carrying on business as takaful operator.

4. (1) Subject to this Act, takaful business shall not be carried on in Malaysia by any person as takaful operator except—

Act 125. (a) by a company as defined in the Companies Act 1965; or

Act 502. (b) by a society registered under the Co-operative Societies Act.

(2) No such company or society shall carry on family solidarity business or general business or both in Malaysia as takaful operator unless—

(a) it is registered under this Act in respect of that class of business or both;

(b) in the case of a company as defined in the Companies Act 1965 and a society mentioned in subsection (1) (b), it maintains at all times a surplus of assets over liabilities of not less than the amount as may be prescribed from time to time;

(c) it has the deposit required by this Act in respect of it; and

(d) it is a member of a takaful association approved by the Minister, provided that this paragraph shall not apply until such an association is established. *Act A620. Note.*

(3) For the purposes of subsection (2) (b), the surplus of assets shall be in the form of cash or securities specified in the First Schedule, or any combination thereof.

(4) For the purposes of this section, the value of takaful assets and liabilities may be determined on a basis to be prescribed from time to time.

(5) A person who contravenes this section shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding eighty thousand ringgit, increased by sixteen thousand ringgit for each day on which he is proved to have done so, or to imprisonment for a term not exceeding twelve months or to both.

Holding out as a registered takaful operator.

5. Where any person holds himself out to be a registered takaful operator in respect of family solidarity business or general business or both where he is not registered under this Act in respect of that business, that person shall be guilty of an offence and shall, on conviction, be liable to a

fine of twenty thousand ringgit or to imprisonment for a term of twelve months or to both, and to a daily fine of not exceeding four thousand ringgit.

Use of word "takaful". 6. (1) No person other than an operator registered under this Act shall, without the written consent of the Director General, use the word "takaful" or any of its derivatives in any language, or any other word indicating that such person carries on takaful business in the name, description or title under which it carries on business in Malaysia or make any representation to such effect in any bill head, letter paper, notice or advertisement or in any other manner:

Provided that nothing in this section shall prohibit a takaful association from using the word "takaful" or any of its derivatives in any language as part of its name or description of its activities.

(2) Any person who contravenes the provision of subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine of four thousand ringgit or to imprisonment for a term of six months or to both and to a daily fine of not exceeding four hundred ringgit.

Examination of persons suspected of carrying on takaful business. 7. (1) Where the Director General has reason to suspect or believe that a person is carrying on takaful business without having been registered under this Act, he may call for or inspect the books, accounts and records of that person in order to ascertain whether or not that person has contravened or is contravening any provisions of this Act.

(2) Any person who wilfully refuses to submit the books, accounts and records or to allow the inspection thereof shall be guilty of an offence and shall, on conviction, be liable to a fine of twenty thousand ringgit or to imprisonment for a term of twelve months or to both and to a daily fine of not exceeding four thousand ringgit.

Registration of takaful operators by Director General. 8. (1) The Director General shall be responsible for the registration of takaful operators and, subject to this section, shall on the application of any company or society qualified under subsection (1) of section 4 register with or without conditions and on payment of the prescribed fees, the applicant in respect of family solidarity business or general business or both.

(2) An application to be registered in respect of family solidarity business or general business may be made by a company or society already registered in respect of the other.

(3) The Director General shall not be required to consider an application unless it is made in writing and he has been furnished with such documents and information as may be prescribed or as he may in the particular case require.

(4) The Director General shall refuse to register an applicant if, after appropriate inquiry, he is satisfied that the

name of the applicant is by its resemblance to the name of any other body likely to deceive.

(5) The Director General shall also refuse to register an applicant unless he is satisfied—

- (a) that the aims and operations of the takaful business which it is desired to carry on will not involve any element which is not approved by the Syariah; and
- (b) that there is in the Articles of Association of the takaful operator concerned provision for the establishment of a Syariah advisory body, as may be approved by the Director General, to advise an operator on the operations of its takaful business in order to ensure that it does not involve in any element which is not approved by the Syariah. *Act A1212.*

(6) Where the Director General is satisfied that an applicant has complied with all the requirements of this section he shall refer the application to the Minister; and if the Minister so directs, the Director General shall not register the applicant who shall be notified of the direction.

(7) The Director General shall not register an applicant in respect of takaful business of either class until the Accountant General certifies to him that the applicant has made in respect of that business the deposit required by this Act.

(8) The Director General shall cause notice of any registration of a takaful business to be published in the *Gazette*.

Annual registration fees. **9.** (1) Every operator shall pay such annual registration fees as the Minister may prescribe.

(2) The Minister may prescribe different registration fees for different classes of takaful business.

Conditions of registration. **10.** (1) The Director General may from time to time and as he thinks fit—

- (a) impose conditions of registration on an operator; or
- (b) add to, vary, or revoke any existing conditions of registration of an operator,

who is already registered under this Act in order for it to remain so registered.

(2) Any operator who fails to comply with any of the conditions imposed by the Director General under subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine of twenty thousand ringgit and to a daily fine of four thousand ringgit.

Cancellation of registration. **11.** (1) The Director General may by order cancel the registration of an operator either wholly or in respect of a class of business, as the case may be, if he is satisfied

that—

- (a) the operator is pursuing aims or carrying on operations involving any element which is not approved by the Syariah;
- (b) the operator has not commenced business within twelve months after being registered;
- (c) the operator has ceased to carry on takaful business in respect of any class of business;
- (d) the operator has failed to maintain a surplus of assets over liabilities in accordance with subsection (2) (b) of section 4;
- (e) the operator has neglected or refused to observe an order of the Director General to make good any deficiency, whenever its takaful fund shall have become impaired;
- (f) the operator proposes to make, or has made any composition or arrangement with its creditors or has gone into liquidation or has been wound up or otherwise dissolved;
- (g) the operator is carrying on its business in a manner likely to be detrimental to the interests of its participants;
- (h) the operator is unable to meet its obligations;
- (i) the operator has failed to effect satisfactory re-takaful arrangements;
- (j) the operator is contravening or has contravened the provisions of this Act or any of the regulations or any conditions imposed or any directions given by the Director General under this Act;
- (k) the operator has been convicted of any offence under this Act or any of its officers holding a managerial or an executive position has been convicted of any offence under this Act;
- (l) the operator has furnished false, misleading or inaccurate information, or has concealed or failed to disclose material facts in its application for registration; or
- (m) it is in the public interest to cancel the registration.

(2) The Director General shall before cancelling any registration under subsection (1) cause to be given to the operator concerned notice in writing of his intention to do so, specifying a date, not less than fourteen days after the date of the notice, upon which the cancellation will take effect and calling upon the operator to show cause to the Director General why the registration should not be cancelled.

(3) Notwithstanding the fact that the registration of an operator has been cancelled under this section, so long as the operator remains under any liability in respect of Malaysian certificates belonging to the class of takaful business to which the registration relates, the operator shall

take such action as it considers necessary or as may be required by the Director General to satisfy him that reasonable provision has been or will be made for that liability and that adequate arrangements exist or will exist for payment in Malaysia of contributions and claims on those certificates.

(4) When the Director General has cancelled a registration under subsection (1) he shall forthwith inform the operator of the cancellation.

(5) Any operator whose registration has been cancelled pursuant to this section may within sixty days of being notified in writing of the cancellation appeal against the order of cancellation to the Minister whose decision thereon shall be final.

(6) An order of cancellation made by the Director General, or where there is an appeal, the decision of the Minister confirming the order of cancellation shall not take effect until the expiration of a period of fourteen days after the operator has been informed in writing of the order or decision.

Effects of cancellation of registration. **12.** (1) Where an order of cancellation becomes effective under section 11—

- (a) notice of the cancellation shall be published in the *Gazette*; and
- (b) the operator shall, as from the date of cancellation, cease to carry on in Malaysia takaful business of the class in respect of which its registration has been cancelled under this Act, otherwise than by the collection or receipt of contributions on Malaysian certificates belonging to that class effected before the date of cancellation of registration and subsection (2) of section 4 shall not apply to the operator in respect of the collection or receipt of those contributions.

(2) The provisions of subsection (1) (a) shall not prejudice the enforcement by any participant or person of any right or claim against the operator or by the operator of any right or claim against any participant or person.

Deposits. **13.** (1) An operator, while registered in respect of any class of takaful business, shall at all times have in respect of that business a deposit with the Accountant General of a value of not less than the amount as may be prescribed by the Minister.

(2) Any such deposit shall be made in cash or securities specified in the First Schedule or partly in one way and partly in the other; and any cash comprised in a deposit may be invested in such manner not contrary to the Syariah as may be approved by the Director General.

(3) All incomes accruing in respect of a deposit shall be payable to the operator making the deposit.

(4) A deposit made under this section in respect of any class of takaful business shall be retained by the Accountant General until either the operator ceases to be registered in respect of that class of takaful business or the deposit is required in the winding up of the operator, and if the operator ceases to be registered as aforesaid, the deposit or part of it may be further retained for the purpose of and in accordance with any such provision for liabilities in respect of certificates as is required by subsection (3) of section 11.

(5) If at any time a deposit under this section (other than a deposit retained after the operator has ceased to be registered as aforesaid) comprises assets other than Government securities, and the value of those assets is less than the sum prescribed by virtue of subsection (1) reduced by the value of any Government securities comprised in the deposit, then the Director General may by notice in writing direct the operator to add thereto within twenty-eight days of the service of the notice, cash or securities specified in the First Schedule of a value not less than the difference.

(6) An operator which has made a deposit under this section may at any time substitute for any assets comprised in the deposit cash or securities specified in the First Schedule, so long as the value of the deposit is not thereby reduced to an amount below that which is required by this Act.

(7) In the foregoing subsections "securities" (except in the expression "Government securities") includes any form of investment not contrary to the Syariah, and "Government securities" means securities of which the principal or profit is charged directly or by way of guarantee on the Consolidated Fund of the Federation or of any State, but no deposit shall include—

- (a) any shares in, or other securities of an operator registered under this Act;
- (b) except so far as a debt comprised in the deposit is secured on land, any estate or interest in land; or
- (c) any securities authorized in paragraphs 2, 3, 4, 5 and 6 of the First Schedule which the Minister on the advice of the Director General and the Accountant General declares in writing to the operator to be unsuitable for the purposes of a deposit.

(8) Where by virtue of subsection (7) (c) any securities comprised in a deposit are declared unsuitable, the operator shall within one calendar month of the securities being so declared, substitute therefor such other securities as are authorized by this section.

Bank covenants in lieu of deposits.
Act 276.

14. (1) If in the case of any operator, a bank licensed under the Islamic Banking Act 1983, makes with the Government an agreement in a form approved by the Director General, whereby the bank covenants with the Government to deposit with the Accountant General a specified sum in cash on account of the operator's deposit under this Act in respect of either class of takaful business,

and the covenant complies with any requirements the Director General sees fit to impose as to the circumstances in which that sum is to be deposited, then for the purposes of this Act the operator shall be treated as having deposited under section 13 a sum of cash equal to that so covenanted for and the sum so covenanted for shall be recoverable notwithstanding that no consideration is furnished on the agreement.

(2) Any sum deposited by a bank in pursuance of an agreement made under subsection (1) shall be dealt with under or for the purposes of this Act as if it were a sum deposited by the operator under section 13.

(3) This section shall not authorize an agreement to be substituted under subsection (6) of section 13 for assets comprised in a deposit.

Register of takaful certificates.

15. (1) Every operator registered under this Act shall establish a register of takaful certificates in such form as may be prescribed and shall, other than any prescribed exceptions, keep the Register at its principal place of business in Malaysia.

(2) Subject to this section, there shall be entered in the Register all Malaysian certificates of the operator, and no certificate entered in the Register shall be removed from it so long as the operator is under any liability in respect of the certificate.

(3) An operator shall, at the request of any person having an interest in any certificate of the operator, inform him whether or not the certificate is entered in the Register.

(4) If the operator ceases to be registered under this Act in respect of either class of takaful business, the Register shall cease to exist as a statutory register under this Act of certificates belonging to that class of business and any reference in this Act to certificates registered under this Act shall be construed accordingly.

(5) Subject to subsection (4), the Register shall, notwithstanding that the operator at any time ceases to carry on in Malaysia either class of takaful business, continue to be maintained by the operator for certificates belonging to that class so long as the operator is under any liability in respect of such certificates registered or required to be registered at that time.

Establishment and maintenance of takaful funds, and allocation of surplus.

16. (1) Every operator registered under this Act shall establish and maintain in accordance with this section a takaful fund in respect of the class or each of the classes of takaful business carried on by the operator in Malaysia so far as that business relates to Malaysian certificates.

(2) There shall be paid into a takaful fund all receipts of the operator properly attributable to the business to which the fund relates (including the income of the fund), and the assets comprised in the fund shall be applicable only to meet such part of the operator's liabilities and expenses as

is properly so attributable.

(3) In the case of a fund established in respect of family solidarity business, no part of the fund shall be allocated by way of takaful benefits to participants, except with the approval of a qualified actuary and out of a surplus of assets over liabilities as shown on the last statutory valuation of the fund and on the making of any such allocation that surplus shall be treated for purposes of this section as reduced by the amount allocated.

(4) In a winding up assets comprised in the deposit made by an operator under this Act in respect of either class of business shall be treated as assets of the takaful fund established by the operator in respect of business of that class, and subsection (2) shall apply to those assets accordingly.

(5) A takaful fund established by an operator for any class of business shall, notwithstanding that the operator at any time ceases to carry on that class of business in Malaysia continue to be maintained by the operator so long as the operator is required by this Act to maintain the Register for certificates belonging to that class.

Requirements as to assets of takaful fund. 17. (1) The assets of any takaful fund under this Act shall be kept separate from all other assets of the operator, and shall not include assets comprised in a deposit under this Act, nor any amounts on account of goodwill, the benefit of development expenditure or similar items not realizable apart from the business or part of the business of the operator.

(2) Subject to section 24 the assets of any takaful fund shall be such that—

- (a) the value of Malaysian assets as specified in the First Schedule, with any such additions as are permitted by subsection (4), is not less than eighty per cent of the total value of the assets of the fund; and
- (b) the value of investments in securities of the Federal or State Government issued in Malaysia is not less than fifteen per cent of the total value of the assets of the fund at any time.

(3) For the purposes of subsection (2) there may be added to the value of items specified in the First Schedule the amount or value of any assets of the fund of the following descriptions:

- (a) outstanding contributions on family solidarity certificates on which future liabilities may be met out of the assets of the fund;
- (b) sums representing claim recoveries from re-takaful operators in or outside Malaysia.

(4) The Minister may, in respect of assets of any takaful fund, require an operator—

- (a) not to make investments of a specified class or

description;

- (b) to realise, before the expiration of a specified period or such extended period as the Minister may allow, the whole or a specified proportion of investments of a specified class or description held by the operator when the requirement is made.

(5) For the purposes of this section the assets from time to time representing any re-takaful operator's deposit held by the takaful operator to meet liabilities of a takaful fund shall be treated with the agreement of the re-takaful operator as assets of the fund.

Restrictions on
payment of
dividends and
grant of advance,
loan, credit facility,
and financing
facility.

18. (1) No operator shall—

- (a) pay any dividend on its shares 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 completely written off;
- (b) grant an advance, a loan, a credit facility, or a financing facility against the security of its own shares;
- (c) except in such special circumstances and in such amounts as the Director General may allow, grant an advance, a loan, a credit facility, or a financing facility—
 - (i) to any of its directors other than an advance, a loan, a credit facility, or a financing facility secured by a certificate in name of the directors;
 - (ii) to a firm in which it or any of its directors has any interest as partner, manager, or agent, or to an individual for whom or a firm for which any of its directors is a guarantor;
 - (iii) to a company in which any of its directors owns twenty per cent of the voting shares or more;
 - (iv) to a company in which the operator owns twenty per cent of the voting shares or more;
 - (v) to a company which owns twenty per cent of the voting shares of the operator or more; and
 - (vi) to a company in which a company mentioned in subparagraph (v) owns twenty per cent of the voting shares or more;
- (d) except in such special circumstances and in such amounts as the Director General may allow, grant to a person other than its employee or to any person mentioned in paragraph (c) an unsecured advance,

unsecured loan, unsecured credit facility, or unsecured financing facility;

- (e) except in such special circumstances as the Director General may allow, act as guarantor on an advance, a loan, a credit facility, or a financing facility granted to any person mentioned in paragraph (c); and
- (f) except with the approval of the Director General, pledge, mortgage or charge any of its assets or securities.

(2) All the directors of the operator shall be liable jointly and severally to indemnify the operator against any loss arising from the making of an unsecured advance, unsecured loan, unsecured credit facility, or unsecured financing facility.

(3) For the purposes of subsection (1), "director" shall be deemed to include the wife, husband, father, mother, son, or daughter of a director.

(4) For the purposes of this section and section 19, "unsecured advance", "unsecured loan", "unsecured credit facility", or "unsecured financing facility" means respectively—

- (a) an advance, a loan, a credit facility, or a financing facility made without security; or
- (b) in the case of an advance, a loan, a credit facility, or a financing facility made with security, any portion of the advance, loan, credit facility, or financing facility which at any time exceeds—
 - (i) the market value of the assets constituting the security; or
 - (ii) the value of the assets constituting the security assessed on a basis approved by the Director General where he is satisfied that there is no established market value.

(5) Nothing shall preclude the operator from investing its fund in any manner allowed by the Syariah.

Disclosure of interests by directors. **19.** (1) Every director of an operator who in any manner whatsoever has an interest, whether directly or indirectly, in an advance, a loan, a credit facility, or a financing facility from that operator shall as soon as practicable make to the operator a declaration in writing as to the nature and extent of his interest and the operator shall within seven days of its receipt furnish copies of that declaration to the Director General, its auditor, and all its directors.

(2) For the purposes of subsection (1), a general notice given to the board of directors of an operator by a director to the effect that he has an interest in a specified enterprise, undertaking, firm or company and that he is to be regarded as having an interest in an advance, a loan, a credit facility, or a financing facility which may, after the date of the notice, be granted to that enterprise, undertaking, firm or company

shall be deemed to be sufficient declaration of interest in relation to an advance, a loan, a credit facility, or a financing facility so granted if—

- (a) it specifies the nature and extent of his interest in that enterprise, undertaking, firm or company; and
- (b) at the time an advance, a loan, a credit facility, or a financing facility is made, his interest is not different in nature or greater in extent than had been specified in the notice.

(3) Every director of an operator who holds an office or possesses any property whereby whether directly or indirectly a duty or an interest may arise in conflict with his duty or interest as such the director shall declare at a meeting of the directors of the operator the fact, nature, and extent of the conflict which may arise.

(4) The declaration referred to in subsection (3) shall be made at the first meeting of the directors held—

- (a) after the person becomes a director of the operator; or
- (b) (if already a director) after the person commenced to hold office or to possess the property whereby the conflict may arise.

(5) The secretary to the board of directors of the operator shall cause to be brought up and read any declaration made or notice given under this section at the next meeting of the directors after the declaration is made or the notice is given and he shall record the same in the minutes of that meeting.

(6) Any director or secretary to a board of directors who acts in contravention of this section shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit or to an imprisonment for a term not exceeding three years or to both.

Requirements as to documents evidencing title to assets of takafal funds. **20.** (1) Where an operator has established a takafal fund under this Act, the operator shall secure that any documents evidencing the operator's title to assets of the fund or assets falling within subsection (5) of section 17, so long as the documents are held by or on behalf of the operator, shall be kept in Malaysia or, if not so kept, shall be kept in the custody of a person approved by the Director General, and at a place and on terms so approved:

Provided that the Director General may, in the case of an operator being investigated under this Act or where the Director General is satisfied that the affairs of an operator are being conducted in a manner likely to be detrimental to the interest of participants, or potential participants, direct that all such documents be handed over to be kept by him or by a person approved by him and at a place and on terms so approved.

(2) An operator who has established a takafal fund shall from time to time notify the Director General in writing the person having custody of any such document on behalf of the operator.

(3) Any document kept by the Director General or by a person approved by him pursuant to the proviso to subsection (1) shall not be released except with the consent in writing of the Director General.

(4) Any such document which is for the time being held by or on behalf of the operator shall, within such period as may be specified in the notice given in writing by the Director General to the operator or to the person having the custody of the document, be produced for inspection to the Director General or a person nominated by him by the person to whom the notice is given.

(5) A person who fails to comply with this section shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding four thousand ringgit, and to a daily fine not exceeding two hundred ringgit.

Establishment and maintenance of takaful guarantee scheme funds and payment of moneys out of the funds.

21. (1) There shall be established and maintained by the Director General in accordance with this section, takaful guarantee scheme funds in respect of general business and family solidarity business respectively carried out by the operator in Malaysia so far as the business relates to Malaysian certificates.

(2) There shall be paid into the takaful guarantee scheme funds through the Director General all such levies as may be imposed on and collected from operators in such instalments as the Director General may allow.

(3) Subject to any direction by the Minister the total amount of levy shall not exceed one per cent of the annual actual contribution of an operator in any one year assessable on the general business, and in the case of family solidarity business on any new business, carried out by the operator in the previous year.

In the case of an operator who has failed to submit his statutory returns under section 41 by the due date, the Director General may, for the purpose of calculating the amount of levy payable by that operator, assess an amount to be deemed to be that operator's actual contribution income for the preceding year and the amount so collected shall be adjusted against actual contribution income shown in the statutory returns when submitted.

(4) Any sum including any other moneys or income received or paid into the takaful guarantee scheme funds including any profit or dividends derived from any investment of any sum out of such funds may be withdrawn and utilized from time to time with the approval and subject to the direction of the Director General to meet the administrative, legal, and other costs of maintaining and administering such funds and the liabilities of any insolvent operator as may be prescribed.

For the purpose of this subsection an operator shall be deemed to be insolvent if—

(a) at the close of the last accounting period for which

statements have been lodged with the Director General under section 41 the operator is insolvent;

- (b) winding up proceeding has been commenced against the operator;
- (c) a receiving order has been made against him by the Court; and
- (d) the operator has been declared a bankrupt.

(5) The Minister may at his discretion direct the Director General at any time after the establishment of the takaful guarantee scheme funds the discontinuance of the collection of any sum by way of levy if he is satisfied that there is more than adequate money in either or both of the funds to meet the liabilities of any insolvent operator in accordance with subsection (4), but may if circumstances warrant, direct the Director General to resume the collection from operators in respect of either or both of the takaful guarantee scheme funds:

Provided that the Minister may from time to time at his discretion direct that this section shall not apply to certain types of takaful business within any class or may apply only with such exceptions, restrictions or on terms or for any period or in any manner as he may prescribe.

(6) The Director General may appoint any suitable person to assist him in the administration and distribution of the takaful guarantee scheme funds.

(7) The moneys in the takaful guarantee scheme funds in so far as they are not for the time being required to be expended for the purposes of this section may be invested in such manner as the Minister may approve and not contrary to the Syariah and all income accruing in respect of such investments shall be credited to the funds.

Enforcement of requirements as to registers of certificates and takaful funds and payment of levies by operators.

22. (1) If an operator defaults in complying with the provisions of sections 15 to 21, the Director General may by notice in writing require the operator to make good the default.

(2) If the operator does not make good the default within one month after the notice is given, the High Court may on the application of the Director General make such order against the operator or any director or officer of the operator as the High Court thinks fit with a view to making good the default and otherwise securing compliance by the operator with sections 15 to 21.

(3) Nothing done under this section shall affect any person's liability for any offence against this Act.

Re-takaful. **23.** (1) An operator shall have arrangements consistent with sound takaful principles for re-takaful of liabilities in

respect of risks undertaken or to be undertaken by the operator in the course of his carrying on takaful business.

(2) The Director General may by giving notice in writing require an operator to produce for his inspection, within a period specified in the notice, treaties on re-takaful, such other detailed information pertaining thereto and any such other re-takaful arrangements as he may in the particular case require.

(3) A person who fails to comply with subsection (2) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two thousand ringgit, and to a daily fine not exceeding one hundred ringgit.

Payment in Malaysian currency of solidarity moneys under family solidarity certificates. **24.** (1) In the case of a family solidarity certificate issued to a participant who is a citizen, any solidarity moneys or moneys payable on the surrender of the certificate shall, notwithstanding anything in the certificate or in any agreement relating thereto, be paid in Malaysian currency, unless at the time of payment it is otherwise agreed between the operator and the person entitled to payment.

(2) Where an operator satisfies the Director General as regards any family solidarity certificate registered under this Act by the operator that the solidarity moneys (including any moneys payable under the certificate on a surrender) may not under the certificate or any agreement relating thereto be paid in Malaysian currency, then for purposes of subsection (2) of section 17 there shall be disregarded such part of the value of the assets of the relevant takaful fund as is equal to the value of the operator's liability in respect of the certificate determined on a basis approved by the Director General.

Assumption of risk by operator. **25.** (1) Subject to subsections (2) and (3), no operator shall assume any risk in respect of any general business unless and until—

(a) the contribution payable is received by the operator or is guaranteed to be paid by such person in such manner and within such time as may be prescribed; or

(b) deposit of such amount as may be prescribed is made in advance in the manner prescribed.

(2) Where the contribution payable pursuant to subsection (1) is received by any person, including a takaful agent or a broker, on behalf of an operator, such receipt shall be deemed to be receipt by the operator for the purposes of that subsection and the onus of proving that the contribution payable was received by a person, including a takaful agent or a broker, who was not authorized to receive such contribution shall lie on the operator.

(3) Subsections (1) and (2) shall apply to such description of general business as may from time to time be prescribed.

(4) Where any person, including a takaful agent or a broker, receives on behalf of an operator a contribution on a takaful certificate of a description for the time being

prescribed pursuant to subsection (3), such person shall deposit with, or despatch by post to, the operator the contribution so collected within such period as may be prescribed in relation to certificates of that description.

(5) Any refund of contribution, in relation to a certificate of a description as may be prescribed under subsection (3) which may become due to a participant on account of the cancellation of a certificate or alteration in its terms and conditions or for any other reason shall be paid by the operator directly to the participant and a proper receipt shall be obtained by the operator from the participant and such refund shall under no circumstances be paid or credited to any other person, including a takaful agent or a broker.

(6) Any person who fails to comply with this section shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit.

Mis-statement of age and non-avoidance of participation. **26.** A takaful certificate shall not be called in question by reason only of a mis-statement of the age of the participant in the case of the family solidarity business.

Control of forms of proposal, certificates and brochures. **27.** (1) The Director General may by notice in writing require an operator to submit to him the forms of proposal and certificates for the time being in use by the operator, and any brochure which is for the time being in use there by the operator for describing the terms or conditions of, or the benefits to be or likely to be derived from, certificates; and where the whole or part of any such forms or brochure is not in the National Language or English there shall be submitted with it a translation in the National Language or English.

(2) A requirement under this section, unless it is otherwise provided therein, shall apply to all such forms and brochures as aforesaid coming into use after the making of the requirement and before the Director General notifies the operator that the requirement is withdrawn.

(3) If it appears to the Director General, after affording the operator an opportunity to make representations orally or in writing that any such form or brochure as aforesaid contravenes or fails to comply with any provision of this Act, or is in any respect likely to mislead, he may by notice in writing direct the operator to discontinue the use of the form or brochure either forthwith or from a date specified in the notice.

(4) For each occasion on which any operator uses a copy of a form or brochure in contravention of subsection (3), the operator shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding four thousand ringgit.

(5) In this section, "brochure" includes any leaflet, circular or similar advertising matter, whether printed or not.

Misleading statement, promise or forecast inducing person to enter into contract of takaful. **28.** Any person who, by any statement, promises or forecasts which he knows to be misleading, false, or deceptive, or by any fraudulent concealment of a material fact, or by the reckless making (fraudulently or otherwise) of any statement, promise or forecast which is misleading, false or deceptive, induces or attempts to induce another person to enter into or offer to enter into any contract of takaful with an operator shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Requirements as to prospectuses and statements of capital. *Act 125.* **29.** (1) (a) In any case where, under section 39 or 42 of the Companies Act 1965, it is unlawful to issue, circulate or distribute a prospectus relating to a company without a copy of it being first delivered for registration under that Act, it shall also be unlawful, in the case of a company registered or intended to be registered as an operator under this Act, to do so without the prospectus having been sanctioned by the Director General; and any person knowingly responsible for the issue, circulation or distribution of a prospectus in contravention of this subsection shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit.

(b) In this subsection, "prospectus" includes any documents to which the expression applies in the said section 39 or 42.

(2) Where a notice, advertisement or other official publication of a company registered or intended to be registered as an operator under this Act, contains a statement of the company's authorized share capital, and does not state therewith how much of that capital has been subscribed and how much is paid up, the company shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding four thousand ringgit.

Opening of branch office. **30.** Except with the prior approval in writing of the Director General, no operator shall open a branch office.

Disqualification of managing director, director, chief executive, principal officer or controller of an operator. **31.** (1) Without prejudice to anything contained in the Companies Act 1965, any person who is a managing director, director, chief executive, principal officer or controller of an operator shall cease to hold office—

- (a) if he becomes bankrupt;
- (b) if he assigns his estate for the benefit of his creditors or makes an arrangement with his creditors pursuant to any law relating to bankruptcy; or
- (c) if he is convicted of an offence involving dishonesty or fraud.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two thousand ringgit.

Duty to notify change of managing director, director, chief executive or principal officer. **32.** An operator shall give notice in writing to the Director General of the fact that any person has become or ceased to be its managing director, director, chief executive, or principal officer before the expiration of a period of fourteen days from the day following that on which that fact or matter comes to the operator's knowledge.

Power to inspect, to require information, etc. **33.** (1) The Director General may from time to time inspect under conditions of secrecy the books, accounts and transactions of any operator and of any of its branch officers.

Act A699.

(2) For the purposes of an inspection under subsection (1), the operator shall allow the Director General access to its books, accounts and documents and shall give such information and facilities as may be required to conduct the inspection:

Provided that the books, accounts and documents shall not be required to be produced at such times and at such places as shall interfere with the proper conduct of the normal daily business of that operator.

(3) Where the Director General is of the opinion that it is necessary for any of the purposes of this Act to do so, he may by notice in writing require any director, officer or representative of any operator to—

- (a) furnish him with any information; or
- (b) appear before him,

in connection with any matter related to any business carried on by that operator in or outside Malaysia in the manner and to the extent, and in the case of an appearance before him, at the time and place, specified in the notice.

(4) Any person who refuses to allow an inspection under subsection (1), or fails to comply with any provision of subsection (2) or any requirement of the Director General under subsection (3), shall be guilty of an offence and shall, on conviction, be liable of a fine not exceeding twenty thousand ringgit and shall also be liable to a further fine not exceeding five thousand ringgit for every day during which the offence is continued.

Change in control of operator. **34.** (1) There shall be no change in the control of an operator incorporated in Malaysia or registered as a society in Malaysia unless the Director General has given approval in writing for such change.

(2) In this section, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policy of the operator.

Takaful agents and brokers. **35.** (1) No person shall carry on takaful business in Malaysia as takaful agent for an operator not entitled under this Act to carry on the business in question in Malaysia; and a person contravening this subsection shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit increased by four thousand ringgit for each day on which he is proved to have done so, or to imprisonment for a term not exceeding twelve months or to both.

(2) Subject to subsection (3), no takaful broker shall in the course of his business as such negotiate any contract of takaful with an operator other than an operator entitled under this Act to carry on the business in question in Malaysia, and no person in Malaysia shall solicit takaful business for an operator not entitled to carry on that business in Malaysia; and a person contravening this subsection shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding eight thousand ringgit or to imprisonment for a term not exceeding six months or to both.

(3) The references in subsection (2) to a contract of takaful and to takaful business shall not apply to re-takaful.

(4) Section 33 shall apply to takaful agents and to takaful brokers.

Intermediaries in takaful transactions. **36.** (1) Any person who—

- (a) invites another person to make an offer or proposal or to take any other step with a view to entering into a contract of takaful with an operator; and
- (b) is connected with that operator as provided in the regulations,

is required to give the prescribed information with respect to his connection with the operator to the person to whom the invitation is issued.

(2) Any person who fails to comply with this section shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding four thousand ringgit or to imprisonment for a term not exceeding six months or to both.

Licensing of brokers. **37.** (1) No person shall act or hold himself out as a takaful broker unless he is the holder of a licence as a takaful broker granted by the Director General and is a member of an association of takaful brokers approved by the Minister.

(2) The Director General shall not be required to consider an application for a licence under this section unless he has been furnished with such documents and information as may be prescribed or he may in the particular case require.

(3) In granting a licence under this section the Director General may impose such conditions as he thinks fit and may at any time add to, vary or revoke such conditions.

(4) Every licence under this section shall be granted for a period of twelve months and on the payment of the prescribed fees.

(5) The Director General may revoke any licence granted under this section if he is satisfied that any of the conditions imposed on the licence has been breached or it is in the interest of the public to do so.

(6) A person who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding eight thousand ringgit, increased by two thousand ringgit for each day on which he is proved to have done so or to imprisonment for a term not exceeding six months or to both.

Adjusters. 38. (1) No person shall act or hold himself out as an adjuster unless he is the holder of a licence as an adjuster granted by the Director General and is a member of an association of adjusters approved by the Minister.

(2) The Director General shall not be required to consider an application for a licence under this section unless he has been furnished with such documents and information as may be prescribed or he may in the particular case require.

(3) In granting a licence under this section the Director General may impose such conditions as he thinks fit and may at any time add to, vary or revoke such conditions.

(4) Every licence under this section shall be granted for a period of twelve months and on the payment of the prescribed fees.

(5) The Director General may revoke any licence granted under this section if he is satisfied that any of the conditions imposed on the licence has been breached or it is in the interest of the public to do so.

(6) Nothing in this section shall apply to—

- (a) an advocate and solicitor and members of other professions who act or assist in adjusting takaful claims as an incident to the practice of their professions and who do not hold themselves out as adjusters;
- (b) an adjuster of maritime losses;
- (c) an employee of an operator who, in the course of his employment, acts or assists in adjusting takaful claims and who does not hold himself out as an adjuster.

(7) Every adjuster shall within one month after the end of each quarter of the year submit to the Director General a quarterly report in the prescribed form of all losses which are the subject of adjustments effected by him.

(8) Sections 30 and 33 shall apply to adjusters.

(9) A person who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit, increased by four

thousand ringgit for each day on which he is proved to have done so, or to imprisonment for a term not exceeding twelve months or to both.

(10) Where a person fails to submit a report as required by subsection (7), he shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit and to a daily fine not exceeding two hundred ringgit.

Examination of person suspected of acting, holding out as broker or adjuster.

39. (1) When the Director General has reason to suspect or believe that a person is acting or holding himself out as a takaful broker or an adjuster without a licence granted under this Act, he may call for or inspect the books, accounts and records of that person in order to ascertain whether or not that person has contravened or is contravening any provisions of this Act.

(2) Any person who wilfully refuses to submit the books, accounts and records or to allow the inspection thereof shall be guilty of an offence and shall, on conviction, be liable to a fine of twenty thousand ringgit or to imprisonment for a term of twelve months or to both and to a daily fine not exceeding four thousand ringgit.

Saving for validity of certificates.

40. Nothing in this Part shall operate to invalidate any takaful certificate.

PART III

RETURNS, INVESTIGATIONS, WINDING UP AND TRANSFERS OF BUSINESS

Annual accounts and audit.

41. (1) An operator registered under this Act shall prepare the statements of account and other statements required by Part I of the Second Schedule and lodge them with the Director General (together with any prescribed fee) and Part III of that Schedule, so far as relevant to those statements, shall have effect with respect to their form and contents and to the time and manner in which they are to be lodged.

(2) An operator registered under this Act shall have its accounts audited for each accounting period for which statements of account are prepared in accordance with subsection (1), and when those statements are lodged with the Director General there shall be lodged with them a certificate of the auditor as required by Part I of the Second Schedule.

(3) The audit required by subsection (2) shall be made by a person who—

- (a) has a place of business in Malaysia;
- (b) is for the time being authorized under section 8 of the Companies Act 1965, to be the operator's auditor or

an auditor of companies generally; and

- (c) has for the time being the approval of the Director General to act for the purposes of this section.

(4) The documents to be lodged with the Director General under this section for any accounting period of an operator shall be accompanied by copies of any report submitted to the members of the operator with respect to that period and (if it is not among the documents so lodged) by any statement of accounts so submitted with respect to that period; but references in this Act to documents lodged with the Director General shall not be taken to include documents required by this section to accompany documents so lodged.

(5) Where any report or statement referred to in subsection (4) 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.

Actuarial investigations and reports as to family solidarity business.

42. (1) Subject to this section, an operator registered under this Act in respect of family solidarity business shall have an investigation made by a qualified actuary into the financial condition of that part of the takaful fund of its family solidarity business specifically allocated for payment of takaful benefits and a report thereon made to it by the actuary, and shall be lodged with the Director General (together with any prescribed fee) such abstract of the actuary's report and certificate relating thereto and such statements as to that business as are required by Part II of the Second Schedule and Part III of that Schedule, so far as relevant to those documents, shall have effect with respect to their form and contents and to the time and manner in which they are to be lodged.

(2) Investigations under subsection (1) shall be made annually at the end of each accounting period as the operator may determine.

(3) References in this Act to documents lodged with the Director General shall not be taken to include documents required by this section to accompany documents so lodged.

(4) Where an operator registered under this Act in respect of family solidarity business—

- (a) has an actuarial investigation made into the family solidarity business for which it maintains a takaful fund under this Act (whether with or without any other family solidarity business carried on by it); and
- (b) the investigation is not made to comply with subsection (1) or with any provision as to returns in the law relating to takaful in a country outside Malaysia, but the results of the investigation are made public,

then the operator shall, as to the lodging of documents with the Director General, comply with the requirements of subsection (1) as in the case of an investigation under that

subsection.

Power to require returns under sections 41 and 42 to be rectified.

43. (1) If it appears to the Director General that any document lodged in accordance with sections 41 and 42 is in any particular unsatisfactory, incomplete, inaccurate or misleading or that it does not comply with the requirements of this Act, the Director General may by notice in writing require such explanations as he considers necessary to be made by or on behalf of the operator within such time (not less than fourteen days) as is specified in the notice.

(2) The Director General may, after considering the explanations referred to in subsection (1), or if such explanations have not been given by or on behalf of the operator within the time specified in that subsection, reject the document or give such directions as he thinks necessary for its variation within such time (not less than one month) as is specified in the directions.

(3) Directions given under subsection (2) with respect to any document may require such consequential variations of any other document lodged by the operator under sections 41 and 42 as may be specified in the directions.

(4) Where directions are given under subsection (2), any document to which they relate shall be deemed not to have been lodged until it is re-submitted with the variations required by the directions, but the operator shall be deemed to have submitted the document within the time limited by the Second Schedule if it is re-submitted as aforesaid within the time limited by the directions.

Additional provisions as to returns under sections 41 and 42.

44. (1) Any participant of an operator shall have a right, on applying to the operator, to be sent by the operator at an address supplied by him copies of documents lodged by the operator to comply with section 41 or 42, and to have the copies despatched not later than fourteen days after the operator receives the application:

Provided that the right shall not extend to any document excepted from this subsection by Part I of the Second Schedule, or to a document of any other description except the last lodged of that description.

(2) Any person shall have the right, on payment of the prescribed fee, at any time during working hours of the office of the Director General, to inspect at that office any document lodged by an operator to comply with section 41 or 42 and any document required by subsection (4) of section 41 to accompany the documents so lodged, and make a copy of the whole or any part of it:

Provided that the right shall not extend to any document excepted from this subsection by Part I of the Second Schedule, or to documents of any other description lodged more than ten years previously.

(3) In any proceedings a certificate signed by the Director General that a document is one lodged by an operator to comply with section 41 or 42, or one that accompanied

documents so lodged, shall be admissible as evidence of the facts certified.

(4) Where an operator fails to comply with section 41 or 42, the operator shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit and to a daily fine not exceeding two hundred ringgit.

Returns of changes in registration particulars. **45.** (1) Subject to subsection (3), where an operator is registered under this Act in respect of either class of takaful business, the operator shall from time to time, until the operator ceases to be so registered, notify the Director General in writing of any change affecting the operator's registration particulars, and shall do so within three months of the change taking place.

(2) Where the change consists in the amendment of any document, or the replacement of any document by a new document, the operator shall furnish the Director General with a copy of the document showing the amendments or, as the case may be, with a copy of the new document.

(3) This section shall have effect subject to any prescribed exceptions, and the Director General may in any particular case dispense (either unconditionally or subject to any conditions) with the furnishing of information under this section about any matter.

(4) In this section "registration particulars" means the documents and information furnished by the operator to comply with subsection (3) of section 8 when applying to be registered in respect of the class of business in question, or furnished by the operator to comply with this section in respect thereof.

Investigation of affairs of takaful operator. **46.** (1) The Director General may institute an investigation into the whole or any part of the business carried on by an operator registered under this Act, if it appears to the Director General—

- (a) that the operator is or likely to become unable to meet its obligations;
- (b) that the operator has failed to comply with any provisions of this Act relating to takaful funds;
- (c) that the operator, having been given notice under section 33, has not, within one month thereafter furnished the required information fully and satisfactorily;
- (d) that the operator has failed to comply with any provisions of section 41, 42 or 45;
- (e) that the expenditure or any class of expenditure incurred in procuring, maintaining or administering any takaful business of the operator is unduly high in relation to the income derived from contributions;
- (f) that the method by which any income or expenditure of the operator is apportioned between takaful funds

or between a takaful fund and any other fund or account is inequitable; or

- (g) that any information in the possession of the Director General calls for such an investigation.

(2) Before instituting an investigation under this section, the Director General shall serve on the operator a notice in writing specifying that before the completion of any investigation under this section the operator shall not under any circumstances save with the prior written approval of the Director General dispose of any assets vested in or accruing to the operator.

Notwithstanding the generality of the above for the purpose of this section, assets include but are not limited to—

- | | |
|------------------------------------|--|
| (i) immovable assets | any land, building and fixtures; |
| (ii) movable assets | any furniture, equipments , books, periodicals and any other movable items, any motor vehicles, vessels, ships, aircrafts and other means of conveyance of whatever description including any tractor, bulldozers and any other type of light and heavy machinery as well as tools and appliances; |
| (iii) investments | any federal, state and local government securities including securities of any quasi-government bodies or agencies; |
| (iv) company and other investments | any stocks and shares whether quoted in any stock exchange or unquoted; |
| (v) cash | any cash deposited in any bank, lending institution or placed with any other bodies or agencies for whatever period either on current or deposit account including any determinable amount of cash in hand; |
| (vi) other assets | any outstanding contributions, commission and other debts or payment due and payable and rights contractual or otherwise accruing to or vested in the operator. |

(3) The Director General may himself make the investigation or may appoint an inspector to make it and

report the results of it to him.

(4) The Director General may appoint an auditor (other than the auditor who prepares statements of account or other statements of the operator under section 41), an actuary, or any other suitable person to be an inspector to carry out the investigation under this section and the cost of such an investigation shall be paid by the operator.

(5) In making an investigation under this section, the Director General or inspector may require—

- (a) the operator, or any person having the custody thereof on behalf of the operator;
- (b) any person who is or has at any time been or acted as a director, actuary, auditor, officer, servant or agent of the operator; or
- (c) any past or present participant of the operator,

to produce for his inspection, and allow him to have access to and to copy the whole or any part of, any books, accounts, records, or other documents of the operator, whether kept in Malaysia or elsewhere (including documents evidencing the operator's title to any assets):

Provided that a requirement under this subsection shall extend only to documents relating to business carried on by the operator in Malaysia, or evidencing the operator's title to assets held for the purposes of any such business.

(6) In making an investigation under this section, the Director General or inspector may require any such individual as is specified in subsection (5) to attend before him and be examined on oath with respect to the operator's business, and for the purposes of this subsection may administer oaths.

(7) If any person refuses or fails, when required to do so under subsection (5) or (6), to produce any document in his custody or power or to attend for or submit to examination by the Director General or inspector, or to answer any question put to him on such examination, the Director General or inspector may certify the refusal under his hand to the High Court; and the High Court may thereupon enquire into the case, and after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, punish the offender in like manner as if he had been guilty of contempt of the High Court.

Powers of Director
General to issue
directions.

47. (1) Where the Director General is satisfied that the affairs of an operator are being conducted in a manner likely to be detrimental to the public interest, the interests of the participants, or the interests of the operator, the Director General may issue such directions to the operator as he considers necessary and may in particular require the operator—

- (a) to take such action or engage such management personnel as may be necessary to enable the

operator to conduct its business in accordance with sound takaful principles;

- (b) to remove any of its directors whom the Director General considers not a fit and proper person to remain a director;
- (c) to take action as to the disposal or recovery of its assets;
- (d) to take steps for the recovery by the operator of sums appearing to the Director General to have been illegally or improperly paid;
- (e) to cease renewal or cease issue of certificates of the classes of business to which the direction relates;
- (f) to make such arrangements with respect to re-takaful as the Director General specifies.

(2) The Director General may modify or cancel any direction issued under subsection (1) and in so doing may impose such conditions as he thinks fit.

(3) An operator who fails to comply with any direction issued under subsection (1) shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding six months or to both and to a further fine of four thousand ringgit for every day during which the offence is continued after conviction.

General provisions
as to winding up.

48. (1) The persons who may petition under the Companies Act 1965 for the winding up of an operator registered under this Act, or for the continuance of the winding up of such an operator subject to the supervision of the Court, shall include the Director General.

(2) The Director General shall be a party to any proceedings under the Companies Act 1965, relating to the winding up of such an operator, and the liquidator in such a winding up shall give him such information as he may from time to time enquire about the affairs of the operator.

(3) For the purposes of any proceedings under the Companies Act 1965, for the winding up of such an operator by the Court, the contingent and prospective liabilities of the operator in respect of certificates shall, in determining whether it is unable to pay its debts, be estimated in accordance with the regulations; and evidence that the operator was insolvent at the last accounting period for which statements of account have been lodged with the Director General under section 41 shall be evidence that the operator continues unable to pay its debts.

(4) If the Minister submits to the Rules Committee proposals for making special provision under section 372 of the Companies Act 1965, in relation to operators registered under this Act or any description of such operators, the Committee may by rules under that section give effect to the proposals, either as submitted or subject to such modifications as the Committee thinks fit.

(5) Proposals under subsection (4), and rules made by virtue thereof, may provide for modifying or excluding, in relation to operators so registered, provisions of Part X of the Companies Act 1965, requiring the holding of meetings or otherwise relating to the procedure in a winding up.

(6) In the winding up of an operator registered under this Act, subsection (2) of section 291 of the Companies Act 1965 (which applies bankruptcy rules in the winding up of insolvent companies) shall not apply to the valuation of liabilities in respect of certificates; but in any such winding up, whether the operator is insolvent or not, those liabilities shall be estimated in accordance with the regulations and, as regards matters not fixed by the regulations, on a basis approved by the Court:

Provided that in a member's voluntary winding up the basis to be adopted as regards matters not fixed by the regulations may be approved by the Director General instead of by the Court.

(7) References in this section to an operator registered under this Act shall extend also to an operator which has ceased to be so registered but remains under any liability in respect Malaysian certificates.

Special provision for takaful operators directed to cease takaful business. **49.** (1) Where the Director General gives an operator a direction under subsection (1) (e) of section 47, the operator may be wound up by the Court under the Companies Act 1965 as if it has suspended its business for a whole year (or, in the case of a winding up under Division 5 of Part X of that Act as if it had ceased to carry on business).

(2) Where the Director General gives an operator a direction as aforesaid but, on a petition for the operator to be wound up by the Court, the Court is satisfied that the operator will be able to pay its debts in full within twelve months or such longer period as the Court thinks reasonable, the Court may (if it thinks fit) order the affairs of the operator to be wound up only as regards the takaful fund maintained for the class of business to which the direction relates.

(3) An order under subsection (2) for a limited winding up shall be of the same effect as an order for the operator to be wound up generally, except so far as this section otherwise provides.

(4) Where such an order is made, the powers of the liquidator shall be exercisable only for the purpose of applying the assets of the relevant takaful fund (including the deposit under this Act) in discharging the liabilities to which they are applicable, together with the costs, charges and expenses incurred in the winding up; but the operator shall from time to time, as the Court may direct, make such additions to those assets as are required to secure that they are sufficient for the purpose or shall, if the Court so directs, discharge any of those liabilities out of other assets.

(5) In the winding up of an operator under such an order, the Companies Act 1965 shall have effect subject to the

following modifications:

- (a) section 214 (or, as the case may be, section 316) and other sections so far as they relate to contributories shall not apply;
- (b) section 222 shall apply after, as it applies before, the making of the winding up order, and subsection (3) of section 126 shall not apply; and
- (c) sections 223, 224, 272, 283 and 293 to 299 shall not apply.

(6) Where such an order is made, the Court may at any time, on the application of the liquidator or of any person who might petition for the operator to be wound up, substitute an order for the operator to be wound up generally, and give such directions as the Court thinks fit as to matters in progress under the previous order, and, subject to any such directions, the winding up shall for all purposes connected with the substituted order be deemed to have commenced at the time of the application for that order.

Co-operative societies doing takaful business. **50.** (1) Where a society registered under the Co-operative Societies Act, is an operator registered under this Act, no proceedings for the dissolution or winding up of the society shall be taken under Part VII of that Act except with the consent of the Director General and in accordance with such conditions, if any, as he sees fit to attach to that consent.

(2) Notwithstanding—

- (a) section 57 of the Co-operative Societies Act 1948, or section 59 of the Co-operative Societies Ordinances of Sabah and Sarawak, as the case may be; or
- (b) subsection (1) of section 314 of the Companies Act 1965,

any such society which is an operator registered under this Act shall be deemed to be an unregistered company within the meaning of Division 5 of Part X of the Companies Act 1965, and may be wound up by the Court accordingly under that Act:

Provided that in any such winding up—

- (a) the provisions of the Companies Act 1965 shall apply with the substitution for references to the Registrar of Companies and the register under that Act of references to the Registrar and register under the Co-operative Societies Act; and
- (b) the provisions of the Co-operative Societies Act, which govern the disposal of any surplus, shall apply, subject to any necessary modifications, as they apply where a society is wound up under that Act.

(3) Where a society has ceased to be an operator registered under this Act, but remains under any liability in respect of Malaysian certificates, this section shall apply as if the society were an operator so registered.

Schemes for transfer of business. **51.** (1) The whole or part of the takaful business of an operator registered under this Act may be transferred to another operator registered in respect of the class or classes of business to be transferred, if the transfer is effected by a scheme under this section, but shall not be transferred except by such a scheme:

Provided that no scheme shall transfer any takaful business of society registered under the Co-operative Societies Act except to another society so registered, nor transfer to such a society any business except that of another.

(2) Any operator registered under this Act shall by virtue of this section have power to make such a transfer by a scheme under this section, and the directors shall have authority on behalf of the operator to arrange for and do all things necessary to give effect to such a transfer; and this subsection shall apply notwithstanding the absence of the power or authority under the constitution of the operator or any limitation imposed by its constitution on its powers or on the authority of its directors.

(3) A scheme under this section may provide for the business in question to be transferred to a body not registered as an operator under this Act in respect of the relevant class of business (including a body not yet in existence), if the scheme is so framed as to operate only in the event of the body becoming so registered.

(4) A scheme under this section for the transfer of any takaful business may extend to the transfer with it of any other business not being takaful business, where the other business is carried on by the operator as ancillary only to the takaful business transferred.

(5) A scheme under this section may include provisions for matters incidental to the transfer thereby effected, and provision for giving effect to that transfer, and in particular—

- (a) for any property, rights or liabilities of the transferor (including assets comprised in a deposit under this Act or in a takaful fund) to vest, by virtue of the scheme and without further or other assurance, in the transferee; and
- (b) for the registration by the transferee of certificates, for the amounts to be included in respect of those certificates in the transferee's takaful fund and for other matters arising under this Act out of the transfer.

(6) A scheme under this section shall be of no effect unless confirmed by the High Court, but may be prepared and submitted for confirmation to the High Court by any of the operators concerned; and if so confirmed, the scheme shall have effect according to its tenor notwithstanding anything in the foregoing sections and be binding on any person thereby affected.

Confirmation of **52.** (1) Before an application is made to the High Court for

schemes. confirmation of a scheme under section 51—

- (a) a copy of the scheme shall be lodged with the Director General together with copies of the actuarial and other reports (if any) upon which the scheme is founded;
- (b) not earlier than one month after the copy is so lodged notice of the intention to make the application (containing such particulars as are prescribed) shall be published in the *Gazette* and in not less than two newspapers approved by the Director General; and
- (c) for a period of fifteen days after the publication of the notice a copy of the scheme shall be kept at each office in Malaysia of every operator concerned, and shall be open to inspection by all members and participants of such an operator who are affected by the scheme.

(2) The Director General may cause a report on the scheme to be made by a qualified actuary independent of the parties to the scheme and, if he does so, shall cause a copy of the report to be sent to each of the operators concerned.

(3) Copies of the scheme and any such report as is mentioned in subsection (1) (a) or (2), or summaries approved by the Director General of the scheme and any such report, shall, except so far as the High Court upon application made in that behalf otherwise directs, be transmitted by the operators concerned, at least fifteen days before application is made for confirmation of the scheme, to every participant affected by the scheme.

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

(5) The Court may confirm the scheme without modification or subject to modifications agreed to by the operators concerned, or may refuse to confirm the scheme.

(6) The operators concerned shall be jointly and severally liable to reimburse to the Director General any expenses incurred by him under this section in connection with any scheme or proposed scheme (subject to any order of the Court as to costs); and a scheme shall include provision as to how that liability is, as between the operators, to be borne.

Documents to be
filed when scheme
confirmed. **53. (1)** (a) Where by a scheme under section 51 takaful business of an operator is transferred to another, the transferee shall within one month after the scheme takes effect, lodge with the Director General—

- (i) statements of the assets and liabilities of each operator concerned as at the time immediately before the transfer, signed on behalf of the operator and, in the case of the transferor, indicating whether the transfer is of the whole of the transferor's business and, if not, the extent to which the transferor's assets

and liabilities relate to the business transferred;

- (ii) a copy of the scheme as confirmed by the Court, and a certified copy of the order of the Court confirming the scheme;
- (iii) copies of any actuarial or other reports upon which the scheme was founded (being reports made since a copy of the scheme was lodged under subsection (1) of section 52); and
- (iv) a statutory declaration made by the chairman of directors of the transferee, or by its principal officer, fully setting forth every payment made or to be made to any person whatsoever on account of the transfer, and stating that, to the best of his belief, no other payment beyond those so set forth has been, or is to be, made on account thereof by or with the knowledge of any operator concerned.

(b) In paragraph (a) (iv) references to the making of a payment include references to the transfer of property or rights of any description.

(2) On the confirmation of a scheme under section 51 each of the operators concerned shall (unless it is an unincorporated company) file a copy of the scheme with the Registrar of Companies or, in the case of societies registered under the Co-operative Societies Act, with the Registrar under that Act.

PART IV

MISCELLANEOUS AND GENERAL

Advice of Syariah Advisory Council **53A.** (1) A takaful operator, a takaful agent, a takaful broker or an adjuster may seek the advice of the Syariah Advisory Council on Syariah matters relating to its or his takaful business and the takaful operator, takaful agent, takaful broker or adjuster shall comply with the advice of the Syariah Advisory Council.

Act A1212

(2) An association—

- (a) whose members are takaful operators, takaful agents, takaful brokers or adjusters; or
- (b) whose members are insurance companies, insurance agents, insurance brokers or insurance adjusters, some of whom are operating takaful business,

may seek the advice of the Syariah Advisory Council on Syariah matters relating to the takaful business of its members and the association and its members who are operating takaful business shall comply with the advice of the Syariah Advisory Council.

(3) In this section, “Syariah Advisory Council” means the Syariah Advisory Council established under subsection 16B(1) of the Central Bank of Malaysia Act 1958.

Central Bank to be responsible for administering, enforcing, carrying out and giving effect to, the provisions of this Act and the Governor of the Central Bank shall be the Director General of Takaful and shall exercise, discharge and perform on behalf of the Central Bank, the powers, duties and functions conferred on the Director General under this Act. *Act A737.*

(2) In the exercise of his functions the Director General shall act in accordance with any general directions of the Minister.

(3) In the exercise of his functions under sections 18, 30, 34, subsection (3) of section 37, subsection (3) of section 38 and section 47 the Director General shall first consult the Minister and shall act in accordance with any directions given by the Minister.

(4) If the Director General (or the acting Director General for the time being during a vacancy or during the absence or incapacity of the Director General) is not a qualified actuary, the Minister shall arrange for the services of a qualified actuary to be available at all times for the purposes of advising in relation to matters arising under this Act.

(5) Without prejudice to the provisions of subsection (6), the Director General may appoint any officer of the Central Bank to exercise or perform all or any of the powers, duties or functions of the Director General under this Act. *Act A699.*

(6) The Director General may authorize or appoint any person to assist him in the exercise of his powers or performance of his duties or functions under this Act either generally or in any particular case.

Indemnity. **55.** The Director General, any officer of the Central Bank appointed under subsection (5) of section 54, any person appointed under section (3) of section 46, or any person authorized or appointed under subsection (6) of section 54 shall not be liable for anything done or omitted to be done in good faith in the exercise of any power or the performance of any function or duty conferred or imposed by this Act or any regulations made thereunder. *Act A699.*

Officers deemed to be public servants. **55A.** For the purposes of this Act, the Director General, any officer of the Central Bank appointed under subsection (5) of section 54, any person appointed under subsection (3) of section 46, and any person authorized or appointed under subsection (6) of section 54 shall be deemed to be public servants within the meaning of the Penal Code. *Act A699.*
F.M.S. Cap. 45.

Annual reports. **56.** (1) Not later than the end of April in any calendar year the Director General shall prepare and submit to the Minister a report on the working of this Act during the preceding calendar year.

(2) The Director General shall include in his report under this section for any year, copies or summaries of documents lodged with him in that year under sections 41 and 42, other than documents excepted from subsections (1) and (2) of section 44, and may include copies or summaries of documents accompanying those lodged as aforesaid; and he may also include in the report such notes on any such documents or summaries as he thinks fit, and copies of any correspondence between him and the operator about any such documents lodged by or received from the operator.

(3) On receiving a report under this section, the Minister shall lay a copy of it before each House of Parliament.

Statistics. **57.** (1) Regulations may provide for the collection by or on behalf of the Director General, at such intervals or on such occasions as may be prescribed, of statistical information as to such matters relevant to takaful as may be prescribed, and may provide for the collection and use of such information for any purpose, whether or not connected with takaful.

(2) Such regulations may make provision for requiring operators, takaful brokers and adjusters to furnish to the Director General, in the prescribed form, such information as may be prescribed.

(3) No use shall be made of any information obtained by or on behalf of the Director General by virtue only of this section except in a form which does not disclose the affairs of any particular person.

Service of notices. **58.** A letter containing a notice or other document to be served by the Director General under the Act shall be deemed to be addressed to the proper place if it is addressed to the place in Malaysia which the addressee last indicated to the Director General as his address or to the addressee's latest address in Malaysia known to the Director General.

Secrecy and penalty. **59.** (1) Except for the purposes of this Act or of any criminal proceedings under this Act, no person appointed to exercise any powers under this Act shall disclose any information with respect to any individual business or the affairs of any individual participant of an operator which has been obtained in the course of his duties and which is not published in pursuance of this Act.

(2) Any person knowingly contravening the provisions of subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding one year.

General provisions as to offences. **60.** (1) Any person who—

- (a) signs any documents lodged with the Director General under section 41 or 42, or under subsection (1) (a) (i) of section 53; or
- (b) furnishes the Director General with any information under or for the purposes of any other provision of this Act,

shall use due care to secure that the document or information is not false in any material particular; and if he does not use care in this behalf and the document or information is false in a material particular, he shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding six months or to both.

(2) Any person who breaches any duty imposed on him by or by virtue of this Act or any regulations made under this Act as being or having been an operator, takaful broker or adjuster shall be guilty of an offence and shall, in a case where no other penalty is provided for by this Act or regulations made under this Act, be liable on conviction to a fine not exceeding two thousand ringgit and to a daily fine not exceeding two hundred ringgit.

(3) Where an offence under this Act is committed by any company or body corporate, any person who at the time of the commission of the offence is a director, manager, secretary or other similar officer of that company or body, or is purporting to act in that capacity, shall be guilty of the offence, unless he proves that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

(4) Where an offence under this Act is committed by a company or body corporate, being an offence consisting in the breach of a duty imposed only on companies and bodies corporate, any individual guilty of the offence (whether by virtue of subsection (3) or otherwise) shall on conviction be liable to imprisonment for a term not exceeding six months in addition to or in substitution for any fine.

(5) For the purpose of any proceedings under subsection (1) (a) a document purporting to be signed by any person shall be presumed to have been signed by him, unless the contrary is proved.

Compounding of offences. **61.** The Minister may prescribe the offences which may be compounded under this Act or the regulations made thereunder and the manner in which the offences may be compounded.

Prosecution. **62.** Any prosecution in respect of any offence under this Act or any regulation made under this Act may be conducted by the Director General or any person authorized in that behalf by the Director General.

Jurisdiction of court.	63. Notwithstanding the provisions of any written law, a court of a Magistrate of the First Class shall have jurisdiction to try any offence under this Act and to award the full punishment for any such offence.
Capacity of infant to participate.	64. A person under the age of eighteen years shall not have the capacity to enter into a contract of takaful.
Payment of family solidarity claim without probate, etc.	65. (1) When a participant, in relation to any family solidarity certificate or solidarity certificates, dies and on his death takaful benefits are payable under the certificate or certificates, the operator may make payment to a proper claimant such sum of the solidarity moneys as may be prescribed without the production of any probate or letters of administration and the operator shall be discharged from all liability in respect of the sum paid. (2) If, in any case mentioned in subsection (1), estate duty is leviable in Malaysia on any such solidarity money, the operator may notwithstanding— 7/11. (a) Section 50 (ii) of the Estate Duty Enactment 1941 of the Federated Malay States; or Sabah Cap. 42. (b) subsection (1) of section 35 of the Estate Duty Ordinance of Sabah, pay to a proper claimant such sum as may be prescribed to be paid under subsection (1) without the solidarity moneys being included in the schedule or certificate mentioned in the sections referred to in paragraphs (a) and (b): Provided that before making any payment under this subsection the operator 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 a sum is paid under subsection (2) on account of any solidarity moneys and the solidarity moneys are not within twelve months after the payment is made included in the schedule or certificate referred to in subsection (2), the operator shall deposit the balance with the Treasury; but before refunding such balance to the operator on his application to pay to the person entitled to the balance, the Treasury may apply the whole or part of the sum deposited in paying any unpaid estate duty leviable on the death. (4) In this section, "proper claimant" means a person who claims to be entitled to the sum in question as executor of the deceased, or who claims to be entitled to that sum under the relevant law.
Knowledge of and statement by authorized agent to be deemed knowledge and statement by	66. (1) A person who has at any time been authorized as its agent by a takaful operator and who solicits or negotiates a contract of takaful in such capacity shall in every such instance be deemed for the purpose of the formation of the contract to be the agent of the operator and the knowledge of such person relating to any matter relevant to the

operator. acceptance of the risk by the operator shall be deemed to be the knowledge of the operator.

(2) Any statement made or any act done by any such person in his representative capacity shall be deemed, for the purpose of the formation of the contract, to be a statement made or act done by the operator notwithstanding any contravention of section 28 or any other provision of this Act by such person.

(3) This section shall not apply—

- (a) where there is collusion or connivance between such person and the proposed participant in the formation of the contract; or
- (b) where such person has ceased being its agent and the operator has taken all reasonable steps to inform or bring to the knowledge of potential participants and the public in general the fact of such cessation.

Application of
other laws.

Act 125.
Act 136.
Act 89.
Ord. 49/58.
Act 287.
Sabah 3/58.
Sarawak Cap. 66.

67. (1) Where there is any conflict or inconsistency between the provisions of this Act and those of the Companies Act 1965, the Contracts Act 1950, the Insurance Act 1963, the Road Traffic Ordinance 1958 and the Co-operative Societies Act, the provisions of this Act shall prevail.

(2) Without prejudice to the generality of subsection (1), for the avoidance of doubt, it is hereby declared that the provisions of the Insurance Act 1963 shall not apply in relation to a company or society registered under this Act and carrying on any business which is insurance business within the meaning of same under the Insurance Act 1963, and the provisions of all written laws shall apply to such company or society and to such a business as if it is a company or society authorised by law to carry on such business and issue any policy or certificate required under any written law in relation to such business.

Act A620.

Regulations. **68.** The Minister may make regulations for carrying into effect the objects of this Act, and for prescribing anything which under this Act is to be prescribed.

FIRST SCHEDULE

[Sections 4 (2) (c), 13 (2), (5) and (6), 17 (3) and (4)]

MALAYSIAN ASSETS AUTHORIZED FOR DEPOSITS AND TAKAFUL FUNDS

- Act 275.*
- 1. Investment certificates issued under the Government Investment Act 1983, or any other securities of which the principal is charged directly or by way of guarantee on the Consolidated Fund of the Federation or of any State.
 - 2. Shares in, or securities of, a body incorporated in Malaysia, which are listed by any stock exchange approved

under the Securities Industry Act 1983.

3. Shares in, or securities of, a society registered under the Co-operative Societies Act.

4. Estates or interests in land in Malaysia and, up to the value of that security, advances, loans, credit facilities or financing facilities secured on any such estate or interest.

Act 102.
Act 276. 5. Any Malaysian currency, and any amount payable in that currency which is held on current account or any deposit account in Malaysia with a bank licensed under the Banking Act 1973 or the Islamic Banking Act 1983 or such other financial institutions as may be prescribed.

6. Such other loans or investments in or connected with Malaysia as may be prescribed.

SECOND SCHEDULE

[Sections 41 (1) and (2), 42 (1), 43 (4), 44 (1) and (2)]

RETURNS BY TAKAFUL OPERATOR

PART I

DOCUMENTS TO BE LODGED YEARLY

1. (1) An operator, to comply with subsection (1) of section 41, shall lodge such statements of account and other statements as are mentioned in this paragraph.

(2) There shall be lodged for each accounting period—

(a) by an operator registered in respect of family solidarity business revenue accounts of the business of the operator, and by an operator registered in respect of general business a revenue account in respect of that business; and

(b) by any operator a profit and loss account for the whole of the operator's business,

together with separate balance-sheets, as at the end of that accounting period, for each class of takaful business in respect of which the operator is registered.

(3) There shall be lodged—

(a) by an operator registered in respect of family solidarity business, statements for each accounting period giving, as regards certificates belonging to that class of business, particulars—

(i) as to the issue of new certificates during the period;

(ii) as to the termination or reduction of the liability, or of the takaful contributions or certificates during the period, and transfers of certificates to or from the Register during the period; and

(iii) as to certificates in force at the end of the period;

(b) by an operator registered in respect of general business, statements for each accounting period

giving as regards certificates belonging to that class of business particulars as to contributions and claims; and

- (c) by an operator registered in respect of either class of business, a statement for each calendar year giving particulars as to the assets held at the end of the year as assets of the takaful fund maintained for that class of business.

(4) Regulations may modify subparagraph (3) (c) so that it requires statements of the assets of a takaful fund to be made for parts of a calendar year instead of the whole year.

(5) The statement required by subparagraph (3) (c) shall be excepted from subsections (1) and (2) of section 44.

2. (1) With any accounts and balance-sheet lodged under paragraph 1 there shall be lodged a certificate of the auditor signed by him and stating whether in his opinion—

- (a) the accounts and balance-sheet are in accordance with this Act;
- (b) the balance-sheet truly represents the financial position of the operator; and
- (c) the books of the operator have been properly kept and record correctly the affairs and transactions of the operator:

Provided that where the audit does not extend to the whole business of the operator the certificate of the auditor shall, as regards paragraphs (b) and (c), be given subject to the appropriate limitation.

(2) The certificate of the auditor shall also state—

- (a) that the operator has, during the relevant accounting period, complied with the provisions of subsection (2) (b) of section 4;
- (b) whether in the relevant accounting period any part of the assets of the takaful fund or funds maintained under this Act has been applied in contravention of section 16, and whether during that period section 17 has been complied with in relation to those assets and any assets falling within subsection (5) of section 17;
- (c) as regards the documents evidencing the operator's title to any such assets whether he has inspected such of those documents as are held by or on behalf of the operator within Malaysia, and whether he has received satisfactory information as to the whereabouts and custody of any others, specifying whether the operator is complying with the requirements of section 20;
- (d) whether all necessary and proper apportionments have been made in preparing the accounts and balance-sheet, and have been made in an equitable manner; and
- (e) such other contravention of the Act as may be discovered in the course of the audit.

PART II

DOCUMENT'S TO BE LODGED ON ACTUARIAL INVESTIGATION OF FAMILY SOLIDARITY BUSINESS

3. (1) An operator registered in respect of family solidarity business, in order to comply with subsection (1) of section 42 in the case of any actuarial investigation, shall lodge such documents as are mentioned in this paragraph.

(2) There shall be lodged an abstract of the actuary's report, which shall be signed by the actuary and shall include—

- (a) a summary and valuation of the certificates as at the date of the investigation; and
- (b) a valuation balance-sheet as at that date of the business to which the report relates.

(3) There shall be lodged a certificate by the actuary, signed by him, that he has satisfied himself as to the accuracy of the valuations made for the purposes of the investigation and as to their being made in accordance with this Act, and as to the accuracy of the data on which they are based:

Provided that, if the actuary is not a permanent officer of the operator, the certificate by the actuary shall, so far as it relates to the accuracy of the data on which the valuations are based, be given and signed by or on behalf of the operator's principal officer in Malaysia, and the actuary shall in his part of the certificate state the precautions taken by the actuary to ensure the accuracy of the data.

(4) There shall be lodged statements signed by the actuary analysing as at the date of the investigation the position as regards certificates and contributions of the business to which the report relates.

PART III

LODGEMENT, FORM AND CONTENTS

4. (1) A document to be lodged by an operator shall be lodged by sending to the Director General five copies, of which (unless the document itself is required by this Schedule to be signed) one copy at least shall be signed by two of the operator's directors and by or on behalf of the operator's principal officer in Malaysia.

(2) The persons signing any balance-sheet shall certify that in their belief the assets set forth in the balance-sheet are fully of the value stated in the balance-sheet, less any investment reserve fund taken into account; and they shall also either certify that in the relevant accounting period no part of the assets of the takaful fund maintained under this Act has been dealt with in contravention of section 16, and during that period section 17 has been complied with in relation to those assets and any assets falling within subsection (5) of section 17, or state the exceptions.

(3) The persons signing a balance-sheet in respect of family solidarity business shall certify that in the relevant

accounting period the provisions of subsection (3) of section 65 with respect to deposits of balance of solidarity moneys with the Treasury have been complied with.

5. (1) Subject to subparagraph (2), a document shall be lodged within six months after the relevant date, or within such longer period as the Director General may allow (but not exceeding nine months from the relevant date); and for this purpose the relevant date is the date to which the document relates or, in the case of an account or statement for an accounting period, the end of that period:

Provided that the Director General, upon being satisfied that the affairs of any operator are being conducted in a manner likely to be detrimental to public interest, the interests of the participants, or the interests of the operator, may in any such case specify a period shorter than six months for the purposes of this subparagraph.

(2) Any such statement of the assets of a takaful fund as is required by subparagraph (3) (c) of paragraph 1 shall be lodged within three months of the date to which the statement relates.

6. A document shall be in the National Language or English, and shall (as regards all five copies) be either printed or, with the permission of the Director General, produced by other mechanical means approved by him.

7. Where by this Schedule a document is required to be signed by or on behalf of the operator's principal officer, it shall, if not signed by that officer, be signed by one of the operator's officers in Malaysia who is for the time being notified to the Director General as having authority for the purposes of this Schedule to sign in place of the principal officer.

8. (1) Subject to the following subparagraphs, a document shall be in the prescribed form and contain the prescribed particulars, and be prepared in accordance with the regulations (including regulations for the way in which any valuation is to be made or in which any item is to be dealt with).

(2) The Director General may in any particular case permit such departure as he thinks fit from any requirement of the regulations under subparagraph (1), if he is satisfied that the purpose of the document in question will nevertheless be substantially fulfilled.

(3) Without prejudice to subparagraph (2), where an abstract is to be lodged of an actuary's report on an investigation made otherwise than to comply with subsection (1) of section 42, the abstract may conform with the regulations under subparagraph (1) subject to any modifications which the Director General may approve, having regard to the purpose of the actuary's investigation and the form and contents of his report.