

## PART XI

### ADMINISTRATIVE AND CIVIL ACTIONS

#### Powers of Commission to take action

- 354.** (1) Where a person—
- (a) contravenes the provisions of this Act other than the provisions of Part V and Division 2 of Part VI or any securities laws; or
  - (b) fails to comply with, observe, enforce or give effect to—
    - (i) the rules of a stock exchange, approved clearing house or central depository;
    - (ii) any written notice, guidelines issued or condition imposed, by the Commission; or
    - (iii) any rule of a recognised self-regulatory organisation,in circumstances where the person is under an obligation to comply with, observe, enforce or give effect to such rules, written notice, guidelines or conditions,
- that person has committed a breach.
- (2) Without limiting the generality of paragraph (1)(b), the following persons shall be deemed to be under an obligation to comply with, observe, enforce or give effect to the rules of a stock exchange, approved clearing house, central depository or recognised self-regulatory organisation, to the extent to which such rules purport to apply in relation to those persons:
- (a) an exchange holding company;
  - (b) a stock exchange;
  - (c) a central depository;
  - (d) an approved clearing house;
  - (e) a participant;
  - (f) a participating organisation;
  - (g) a depository participant;
  - (h) a corporation that has submitted a proposal under Part VI or who has been admitted to the official list of a stock exchange and has not been removed from that official list and a person associated with such corporation;

- (i) a recognised self-regulatory organisation;
  - (j) a person to whom the rules of a stock exchange, an approved clearing house, a central depository or a recognised self-regulatory organisation, as the case may be, apply;
  - (k) the directors or officers of the persons referred to in paragraphs (a) to (i);
  - (l) the advisers of a corporation referred to in paragraph (h) in relation to any corporate proposal or transaction;
  - (m) the issuer and each director of the issuer at the time of the issue of the prospectus;
  - (n) a person who consented or caused himself to be named and is named in the prospectus as a director or as having agreed to become a director, either immediately or after an interval of time;
  - (o) a promoter in respect to the preparation of a prospectus;
  - (p) a person named in the prospectus with his consent, as having made a statement that is included in the prospectus;
  - (q) a person named in the prospectus with his consent, as a stockbroker, sharebroker or underwriter;
  - (r) a trustee approved by the Commission under section 260;
  - (s) a trustee approved by the Commission under section 289;
  - (t) a management company approved by the Commission under section 289; or
  - (u) any other person on whom an obligation under any guideline issued by the Commission has been imposed.
- (3) If a person has committed a breach and the Commission is satisfied that it is appropriate in all the circumstances to take action against that person, the Commission may take any one or more of the following actions:
- (a) direct the person in breach to comply with, observe, enforce or give effect to such rules, provisions, written notice, condition or guideline;
  - (b) impose a penalty in proportion to the severity or gravity of the breach on the person in breach, but in any event not exceeding five hundred thousand ringgit;
  - (c) reprimand the person in breach;
  - (d) require the person in breach to take such steps as the Commission may

- direct to remedy the breach or to mitigate the effect of such breach, including making restitution to any other person aggrieved by such breach;
- (e) in the case of a breach of Part VI or guidelines issued pursuant to Part VI, refuse to accept or consider any submission under Part VI;
  - (f) in the case of a promoter or a director of a corporation, in addition to the actions that may be taken under paragraphs (a) to (e) above, the following actions may be taken by the Commission:
    - (i) impose a moratorium on, or prohibit any trading of or any dealing in, the corporation's securities or in any other securities which the Commission thinks fit by the promoter or director or any persons connected with the promoter or director; or
    - (ii) issue a public statement to the effect that, in the Commission's opinion, the retention of office by the director is prejudicial to the public interest.
- (4) The Commission shall not take any action under subsection (3) without giving the person in breach an opportunity to be heard.
- (5) For the purposes of paragraph (3)(d), in determining whether or not restitution is to be made by a person in breach, the Commission shall have regard to—
- (a) the profits that have accrued to such person in breach; or
  - (b) whether one or more persons have suffered loss or been otherwise adversely affected as a result of the breach.
- (6) Where the Commission takes an action under subsection (3) against any person under the rules of the stock exchange, an approved clearing house or a central depository, the Commission shall serve a written notice on the stock exchange, the approved clearing house or the central depository, as the case may be, of the grounds and the proposed action to be taken by the Commission.
- (7) Nothing in this section shall preclude—
- (a) the Commission from taking any of the actions that it is empowered to take under this Act or any securities laws against the person in breach; and
  - (b) the exchange holding company, stock exchange, approved clearing house or central depository, as the case may be, from taking any action under the relevant rules.
- (8) Where a person has failed to pay a penalty imposed by the Commission under paragraph (3)(b), the penalty imposed by the Commission may be sued for and recovered as a civil debt due to the Government of Malaysia.
- (9) Without prejudice to any other remedy, where a direction under paragraph (3)(d)

had required the person in breach to make restitution in the form of monetary payment, and the person in breach fails to pay the restitution, the Commission may sue for and recover the restitution as a civil debt due to the persons aggrieved by the breach.

- (10) To the extent that any of the amount obtained under paragraph (3)(d) or subsection (9) has not been distributed due to the difficulty of ascertaining or notifying the aggrieved persons, such amount shall be—
- (a) paid to the compensation fund maintained under Part IV; or
  - (b) retained by the Commission to defray the costs of regulating the capital market, as the Commission, with the approval of the Minister, may determine.

**Power of Commission to take action against futures exchange, approved clearing house, etc., for failure to comply with rules, regulations, etc.**

**355.** (1) Where a person—

- (a) contravenes the provisions of this Act other than the provisions of Part V and Division 2 of Part VI or any securities laws; or
- (b) fails to comply with, observe, enforce or give effect to—
  - (i) the rules of a futures exchange or approved clearing house;
  - (ii) any written notice, guidelines issued or condition imposed, by the Commission; or
  - (iii) any rules of a recognised self-regulatory organisation,

in circumstances where the person is under an obligation to comply with, observe, enforce or give effect to such rules, written notice, guidelines or conditions,

that person has committed a breach.

- (2) Without limiting the generality of paragraph (1)(b), the following persons shall be deemed to be under an obligation to comply with, observe, enforce or give effect to the rules of a futures exchange, approved clearing house or recognised self-regulatory organisation to the extent to which such rules purport to apply in relation to those persons:
- (a) an exchange holding company;
  - (b) a futures exchange;
  - (c) an approved clearing house;

- (d) an affiliate;
  - (e) a recognised self-regulatory organisation;
  - (f) a person to whom the rules of a futures exchange, approved clearing house or recognised self-regulatory organisation, as the case may be, apply;
  - (g) the directors or officers of the persons referred to in paragraphs (a) to (d); or
  - (h) any other person on whom an obligation under any guideline issued by the Commission has been imposed in respect of trading, investment advice or fund management in respect of futures contracts.
- (3) If a person has committed a breach and the Commission is satisfied that it is appropriate in all the circumstances to take action against that person, the Commission may take any one or more of the following actions:
- (a) direct the exchange holding company or futures exchange, as the case may be—
    - (i) to suspend trading on the futures market in a particular class of futures contracts;
    - (ii) to limit transactions on the futures market to the closing out of futures contracts;
    - (iii) to defer for a stated period the completion date for all futures contracts or for a particular class of futures contracts entered into on the futures market;
    - (iv) to cause a particular futures contract entered into on the futures market or each futures contract included in a particular class of futures contracts so entered into, to be—
      - (A) closed out immediately as the result of the matching up of the futures contract with a futures contract of the same kind whose price or value is equal to a price or value determined by the futures exchange; or
      - (B) invoiced back to a stated date at a price or value determined by the futures exchange;
    - (v) to require a futures contract entered into on the futures market or each futures contract included in a particular class of futures contracts so entered into, to be discharged by—
      - (A) the tendering of a merchantable lot of an instrument determined by the futures exchange, that is of a quality or standard determined by the futures exchange, that is different

from the quality or standard of the instrument stated in the futures contract; and

- (B) the tendering of a price adjusted by an amount determined by the futures exchange that is appropriate having regard to the quality or standard of the instrument referred to in subparagraph (A);
    - (vi) to require any affiliates of the futures exchange to act in a particular manner in relation to trading in futures contracts on the futures market of that futures exchange or in relation to trading in a particular class of futures contracts;
  - (b) direct the person in breach to comply with, observe, enforce or give effect to such rules, provisions, written notice, condition or guideline;
  - (c) impose a penalty in proportion to the severity or gravity of the breach on the person in breach, but in any event not exceeding five hundred thousand ringgit;
  - (d) reprimand the person in breach;
  - (e) require the person in breach to take such steps as the Commission may direct to remedy the breach or to mitigate the effect of such breach, including making restitution to any other person aggrieved by such breach.
- (4) The Commission shall not take any action under subsection (3) without giving the person in breach an opportunity to be heard.
- (5) For the purpose of paragraph (3)(e), in determining whether or not restitution is to be made by an exchange holding company, futures exchange, approved clearing house, director, officer or affiliate concerned, or any other person concerned, the Commission shall have regard to—
- (a) the profits that have accrued to such exchange holding company, futures exchange, approved clearing house, director, officer or affiliate concerned or any other person concerned; or
  - (b) whether any person has suffered loss or been otherwise adversely affected as a result of the breach.
- (6) Where the Commission takes an action under subsection (3) against any person under the rules of the futures exchange, an approved clearing house or a central depository, the Commission shall serve a written notice on the futures exchange, the approved clearing house or the central depository, as the case may be, of the grounds and the proposed action to be taken by the Commission.
- (7) Nothing in this section shall preclude—
- (a) the Commission from taking any of the actions that it is empowered to take under this Act or any securities laws against the person in breach; and

- (b) the exchange holding company, futures exchange or approved clearing house, as the case may be, from taking any action under its rules.
- (8) Where a person has failed to pay a penalty imposed by the Commission under paragraph (3)(c), the penalty imposed by the Commission may be sued for and recovered as a civil debt due to the Government of Malaysia.
- (9) Without prejudice to any other remedy, where a direction under paragraph (3)(e) had required the person in breach to make restitution in the form of monetary payment, and the person in breach fails to pay the restitution, the Commission may sue for and recover the restitution as a civil debt due to the persons aggrieved by the breach.
- (10) To the extent that any of the amount obtained under paragraph (3)(e) or subsection (9) has not been distributed due to the difficulty of ascertaining or notifying the aggrieved persons, such amount shall be paid to—
  - (a) the fidelity fund maintained under Part IV; or
  - (b) retained by the Commission to defray the costs of regulating the capital market, as the Commission, with the approval of the Minister, may determine.

### **Powers concerning compliance with conditions of licence, etc., by licensed persons**

- 356.** (1) Where a licensed person—
- (a) contravenes or fails to comply with, observe, enforce or give effect to any requirement or provision of this Act, any securities laws, written notice, guidelines, any condition of, or restriction on, a licence granted under or pursuant to this Act; or
  - (b) performs or omits to perform any act in respect of any business carried on by the licensed person pursuant to a licence granted under or pursuant to this Act, that is likely to—
    - (i) jeopardise the interests of the clients of the licensed person; or
    - (ii) be prejudicial to the public interest,
- that licensed person has committed a breach.
- (2) If a licensed person has committed a breach and the Commission is satisfied that it is appropriate in all the circumstances to take action against that licensed person, the Commission may take any one or more of the following actions:
- (a) direct the person in breach to comply with, observe, enforce or give effect to any requirement or provision of this Act, any securities laws, any guidelines, written notice, any condition of, or restriction on, a licence granted under or pursuant to this Act, as the case may be;

- (b) impose a penalty in proportion to the severity or gravity of the breach on the person in breach, but which in any event shall not exceed five hundred thousand ringgit;
  - (c) reprimand the person in breach;
  - (d) require the person in breach to take such steps as the Commission may direct to remedy the breach or to mitigate the effect of such breach, including making restitution to any other person aggrieved by such breach.
- (3) The Commission shall not take any action under subsection (2) without giving the person in breach an opportunity to be heard.
- (4) For the purposes of paragraph (2)(d), in the determination of whether restitution is to be made by a person in breach, the Commission shall have regard to—
  - (a) the profits that have accrued to such person in breach; or
  - (b) whether any person has suffered loss or been otherwise adversely affected as a result of the breach.
- (5) Where the Commission takes an action under subsection (2) against any person under the rules of the stock or futures exchange, an approved clearing house or a central depository, the Commission shall serve a written notice on the stock or futures exchange, the approved clearing house or the central depository, as the case may be, of the grounds and the proposed action to be taken by the Commission.
- (6) Nothing in this section shall preclude the Commission from taking any of the actions that it is empowered to take under this Act or any securities laws against the person in breach.
- (7) Where a person has failed to pay a penalty imposed by the Commission under paragraph (2)(b), the penalty imposed by the Commission may be sued for and recovered as a civil debt due to the Government of Malaysia.
- (8) Without prejudice to any other remedy, where a direction under paragraph (2)(d) had required the person in breach to make restitution in the form of monetary payment, and the person in breach fails to pay the restitution, the Commission may sue for and recover the restitution as a civil debt due to the persons aggrieved by the breach.
- (9) To the extent that any of the amount obtained under paragraph (2)(d) or subsection (8) has not been distributed due to the difficulty of ascertaining or notifying the aggrieved persons, such amount shall be—
  - (a) paid to the compensation fund or fidelity fund maintained under Part IV, as the case may be; or
  - (b) retained by the Commission to defray the costs of regulating the capital market, as the Commission, with the approval of the Minister, may determine.

## Civil liability of person in contravention of the securities laws

- 357.** (1) A person who suffers loss or damage by reason of, or by relying on, the conduct of another person who has contravened any provision of Part VI or any regulations made under this Act may recover the amount of the loss or damage by instituting civil proceedings against the other person whether or not that other person has been charged with an offence in respect of the contravention or whether or not a contravention has been proved in a prosecution.
- (2) Notwithstanding the provisions of any written law relating to limitation of time, an action under subsection (1) may be begun at any time within six years from the date on which the cause of action accrued or the date on which the person referred to in subsection (1) became aware of the contravention, whichever is the later.

## Commission may recover loss or damage

- 358.** (1) The Commission may, if it considers that it is in the public interest to do so, recover on behalf of a person who suffers loss or damage by reason of, or by relying on, the conduct of another person who has contravened any provision of Part VI or any regulations made under this Act, the amount of the loss or damage by instituting civil proceedings against the other person whether or not that other person has been charged with an offence in respect of the contravention or whether or not a contravention has been proved in a prosecution.
- (2) Notwithstanding the provisions of any written law relating to limitation of time, an action under subsection (1) may be begun at any time within six years from the date on which the cause of action accrued or the date on which the Commission became aware of the contravention, whichever is the later.
- (3) Any loss or damage recovered by the Commission under subsection (1) shall be applied—
- (a) firstly, to reimburse the Commission for all costs of the investigation and proceedings in respect of the contravention; and
  - (b) secondly, to compensate persons who suffer loss or damage by reason of, or by relying on, the conduct of another person who has contravened any provision of Part VI or any regulations made under this Act.
- (4) If the Commission considers that it is not practicable to compensate the persons referred to in paragraph (3)(b), in view of the amount of any potential distribution to each person or the difficulty of ascertaining or notifying the persons whom it is appropriate to compensate, as the case may be, the Commission may decide not to distribute to the persons referred to in paragraph(3)(b).
- (5) To the extent that any of the amount recovered or obtained in a civil action under subsection (1) has not been distributed pursuant to subsection (3), it shall—
- (a) be paid to the Capital Market Development Fund maintained under Part IX; or

- (b) be retained by the Commission to defray the costs of regulating market trading, as the Commission, with the approval of the Minister, may determine.
- (6) Any right of action that is conferred under this section is in addition to any right that such person has under any other law.

### **Reference to conduct**

- 359.** (1) A reference to engaging in conduct is a reference to the doing or refusing to do any act, including the making of an agreement or the giving of effect to a provision of an agreement.
- (2) Where, in a proceeding under Part VI in respect of conduct engaged in by an issuer, it is necessary to establish the state of mind of the issuer, it shall be sufficient to show that a director, employee or agent of the issuer, being a director, employee or agent by whom the conduct was engaged in within the scope of the director's, employee's or agent's actual or apparent authority, had that state of mind.
- (3) Conduct engaged in on behalf of an issuer—
- (a) by a director, employee or agent of the issuer within the scope of the director's, employee's or agent's actual or apparent authority; or
  - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, employee or agent of the issuer, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, employee or agent,
- shall be deemed to have been engaged in by the issuer.
- (4) Where, in a proceeding under Part VI in respect of conduct engaged in by a person other than an issuer, it is necessary to establish the state of mind of the person, it shall be sufficient to show that an employee or agent of the person, being an employee or agent by whom the conduct was engaged in within the scope of the employee's or agent's actual or apparent authority, had that state of mind.
- (5) Conduct engaged in on behalf of a person other than an issuer—
- (a) by an employee or agent of the person within the scope of the actual or apparent authority of the employee or agent; or
  - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of an employee or agent of a person other than the issuer (the first-mentioned person), where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent,
- shall be deemed to have been engaged in also by the first-mentioned person.

## Power of court to make certain orders

**360.** (1) Where—

- (a) on an application by the Commission, it appears to the court that—
  - (i) there is reasonable likelihood that any person will contravene a relevant requirement;
  - (ii) any person has contravened a relevant requirement; or
  - (iii) any person has contravened a relevant requirement and that there are steps which could be taken to remedy the contravention or to mitigate the effect of such contravention, including making restitution to any other person aggrieved by such contravention,

whether or not that person has been charged with an offence in respect of the contravention or whether or not a contravention has been proved in a prosecution;

- (b) on an application by the Commission, it appears to the court that any person has failed or is failing to comply with any direction issued by the Commission under section 354, 355 or 356;
- (c) on an application by an exchange holding company, a stock exchange, a futures exchange or an approved clearing house, as the case may be, it appears to the court that—
  - (i) any person has contravened a relevant requirement; or
  - (ii) any person has contravened a relevant requirement and that there are steps which could be taken for remedying the contravention or mitigating the effect of such contravention; or
- (d) on an application by any person aggrieved by an alleged contravention by another person of a relevant requirement, it appears to the court that—
  - (i) the other person has contravened the relevant requirement; and
  - (ii) the applicant is aggrieved by the contravention,

the court may, without prejudice to any order it would be entitled to make otherwise than pursuant to this section, make one or more of the following orders:

- (A) an order restraining or requiring the cessation of the contravention;
- (B) an order restraining a person from dealing in securities or trading in futures contracts in respect of any class of securities or futures contracts mentioned in the order;

- (C) an order declaring a futures contract to be void or voidable;
- (D) an order restraining the person from acquiring, disposing of or otherwise dealing with, assets which the court is satisfied such person is reasonably likely to dispose of or otherwise deal with;
- (E) an order directing a person to dispose of any securities that are specified in the order;
- (F) an order restraining the exercise of any voting or other rights attached to any securities that are specified in the order;
- (G) an order restraining a person from making available, offering for subscription or purchase, or issuing an invitation to subscribe for or purchase, or allotting any securities that are specified in the order;
- (H) an order appointing a receiver of the property of a holder of a Capital Markets Services Licence or the property that is held by such holder for or on behalf of another person whether on trust or otherwise;
- (I) an order vesting securities or such other property that is specified in the order in the Commission or a trustee appointed by the court;
- (J) where a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do any act or thing that he is required to do under a relevant requirement, an order requiring such person to do such act or thing;
- (K) in a case of a contravention by a person of the rules of a stock exchange, a futures exchange or an approved clearing house, an order giving directions concerning compliance with or enforcement of those rules to—
  - (i) the person; and
  - (ii) if the person is a body corporate, the directors of the body corporate;
- (L) in a case where the person is a chief executive or director, an order removing him from office or that he be barred from becoming a chief executive, director or be involved in the management directly or indirectly, of any other public company for such period of time as may be determined by the court;
- (M) an order requiring that person, or any other person who appears to have been knowingly involved in the contravention, to take such steps as the court may direct to remedy it or to mitigate its effect including making restitution to any other person aggrieved by such contravention;
- (N) for the purpose of securing compliance with any other order under this section, an order directing a person to do or refrain from doing a specified act;

- (O) where a person has refused or failed or is refusing or failing to comply with any direction issued by the Commission under section 354, 355 or 356, an order directing such person to comply with such direction that is issued by the Commission; and
  - (P) any ancillary order deemed to be desirable in consequence of the making of an order under any of the preceding provisions of this subsection.
- (2) If an application is made to a court for an order under subsection (1), the court may, if in its opinion it is desirable to do so, before considering the application, make an interim order of the kind applied for and such order shall be expressed to have effect pending the determination of the application.
  - (3) The court may, before making an order under subsection (1), direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.
  - (4) Where an application is made to the court for an order under paragraph (1)(J), the court may grant the order—
    - (a) where the court is satisfied that the person has refused or failed to do the required act or thing, whether or not it appears to the court that the person intends to again refuse or fail, or continue to refuse or fail, to do the required act or thing; or
    - (b) where it appears to the court that in the event that such an order is not granted, it is likely that the person will refuse or fail to do the required act or thing, whether or not the person has previously refused or failed to do the act or thing and whether or not there is any imminent risk of damage to any person if the person required to do such act or thing refuses or fails to do so.
  - (5) Where an application for an order under subsection (1) is made by the Commission or any person duly authorised by the Commission or a stock exchange, a futures exchange or an approved clearing house, the court shall not, as a condition of the grant of the order, require any undertaking as to damages to be given by or on behalf of the Commission, stock exchange, futures exchange or an approved clearing house.
  - (6) A person appointed by order of the court under subsection (1) as a receiver of the property of a holder of a Capital Markets Services Licence—
    - (a) may require the holder to deliver to the receiver any property of which he has been appointed receiver or to give to the receiver all information concerning that property that may reasonably be required;
    - (b) may acquire and take possession of any property of which he has been appointed receiver;
    - (c) may deal with any property that he has acquired or of which he has taken possession in any manner in which the holder might lawfully have dealt with the property; and

- (d) has such other powers in respect of the property as the court specifies in the order.
- (7) In paragraph (1)(H) and subsection (6), “property”, in relation to a holder of a Capital Markets Services Licence includes monies, securities, or other property and documents of title to securities or other property entrusted to or received on behalf of any other person by the holder of a Capital Markets Services Licence or another person in the course of or in connection with the business of the holder.
- (8) The Commission or a trustee appointed by an order of the court under paragraph (1)(I)–
  - (a) may require any person to deliver to the Commission or trustee any securities or such other property specified in the order or to give to the Commission or trustee all information concerning the securities or futures contracts that may reasonably be required;
  - (b) may acquire and take possession of the securities or such other property;
  - (c) may deal with the securities or such other property in any manner as it thinks fit; and
  - (d) shall have such other powers in respect of the securities or such other property as may be specified by the court in the order.
- (9) The proceeds of the dealing in or disposal of securities or futures contracts under paragraph (1)(I) shall be paid into the court, and any person claiming to be beneficially entitled to the whole or any part of such proceeds may, within thirty days of such payment into the court, apply to the court for payment out of the proceeds to him.
- (10) A person who contravenes–
  - (a) an order under subsection (1) that is applicable to him;
  - (b) a requirement of a receiver appointed by order of the court under subsection (1); or
  - (c) a requirement of the Commission or trustee appointed by order of the court under paragraph (1)(I),commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.
- (11) Subsection (10) does not affect the powers of the court in relation to the punishment of contempt of court.
- (12) The court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

- (13) For the purposes of this section, “relevant requirement”–
- (a) in relation to an application by the Commission under this section, means a requirement–
    - (i) which is imposed by or under this Act or any securities laws;
    - (ii) which is imposed as a condition or restriction of any approval or licence that is given or issued under or pursuant to this Act or any securities laws;
    - (iii) which is imposed by or under the rules of a stock exchange, a futures exchange or an approved clearing house; or
    - (iv) which is imposed by or under any other law and the contravention of which constitutes an offence which the Commission has the power to prosecute with the consent in writing of the Public Prosecutor;
  - (b) in relation to an application by the exchange holding company, a stock exchange, a futures exchange or an approved clearing house, means a requirement which is imposed by or under the rules of the stock exchange, the futures exchange or approved clearing house, as the case may be; and
  - (c) in relation to an application by the aggrieved person, means a requirement–
    - (i) which is imposed by or under this Act;
    - (ii) which is imposed as a condition or restriction of any approval or licence that is given or issued under or pursuant to this Act or any securities laws; or
    - (iii) which is imposed by or under the rules of a stock exchange, a futures exchange or an approved clearing house.
- (14) An application made pursuant to this section shall not prejudice any other action that may be taken by the Commission, exchange holding company, stock exchange, futures exchange, approved clearing house or aggrieved person, as the case may be, under any securities laws or any other law or rules.

### **Application for winding up**

- 361.** (1) Notwithstanding the provisions of the Companies Act 1965, if a person referred to in subsection 360(1) is a company, whether or not the company is being wound up voluntarily, the person may be wound up under an order of the court on the petition of the Commission, a stock exchange, futures exchange or an approved clearing house, in accordance with the provisions of the Companies Act 1965.
- (2) The court may order the winding up on a petition made under subsection (1) if the person referred to in subsection 360(1)–

- (a) has held a licence under this Act, and that licence has been revoked or surrendered; or
- (b) has contravened any rules of the stock exchange, the futures exchange or the approved clearing house or has contravened a provision of a securities law, whether or not that person has been charged with an offence in respect of the contravention, or whether or not the contravention has been proved in a prosecution.