

PART XII

GENERAL

Prohibition of use of certain titles

362. (1) A person who is not a participating organisation or an affiliate shall not take or use or by inference adopt the name, title or description of "participating organisation" or "affiliate", or take or use or have attached to or exhibited at any place any name, title or description implying or tending to create the belief that such person is a participating organisation or an affiliate.
- (2) Unless the Commission otherwise permits, a person who is not an exchange holding company, a stock exchange or a futures exchange shall not take or use or by inference adopt the name, title or description of "exchange holding company", "stock exchange", "futures exchange", "stock market", "futures market", "securities trading market" or "futures trading market", or take or use or have attached to or exhibited at any place any name, title or description implying or tending to create the belief that such person is an exchange holding company, stock exchange or futures exchange.
- (3) A person who is not a holder of a Capital Markets Services Licence or a Capital Markets Services Representative's Licence shall not take or use or have attached to or exhibited at anyplace any name, title or description implying or tending to create the belief that such person is licensed to carry on a business or performs any function in relation to any regulated activity as specified in Schedule 2.

Copy of book as *prima facie* evidence

363. (1) A copy of the books kept or maintained by a stock exchange, futures exchange, approved clearing house, central depository or holder of a Capital Markets Services Licence shall in all legal proceedings be received as *prima facie* evidence of such books and of the matters, transactions and accounts recorded in such books.
- (2) A copy of the books referred to under subsection (1) shall not be received in evidence under this Act unless it is first proved that the said matters, transactions and accounts are recorded in the books in the ordinary course of business and are in the custody or control of the stock exchange, futures exchange, approved clearing house, central depository or holder of Capital Markets Services Licence.
- (3) Such proof as required under subsection (2) may be given orally or by an affidavit by a person who either before or after such matters, transactions and accounts are recorded in the books, is responsible for the management, custody or control of the books.
- (4) The affidavit under subsection (3) shall be sworn before any Magistrate or person authorised to take affidavit.
- (5) A copy of the books referred to in subsection (1) shall not be received in evidence under this Act unless it is proved that the person referred to in subsection (3) has examined the copy with the original books.

- (6) Such proof as required under subsection (5) shall be given by a person who has examined the copy with the original books and may be given either orally or by an affidavit sworn before any Magistrate or person authorised to take affidavit.
- (7) Notwithstanding the provisions of subsections (5) and (6), where the original books cannot be found or are lost, it shall be sufficient for the person referred to in subsection (3) to state orally or in an affidavit given under this section that he had made reasonable efforts to locate the original books and thereafter the copy of the books shall be admissible as *prima facie* evidence of such matters, transactions and accounts recorded in the books, in any legal proceedings.

Application by aggrieved person for review

- 364.** The Commission may review its own decision under this Act upon an application made by any person who is aggrieved by such decision.

Time for application for review

- 365.** An application to the Commission to review its own decision shall be made within thirty days after the aggrieved person is notified of such decision.

Decision of Minister to be final

- 366.** Except as otherwise provided in this Act, any decision made by the Minister under this Act, whether an original decision by him or a decision on appeal to him from a decision of the Commission, shall be final.

Offences by bodies of persons and by employees and agents

- 367.** (1) Where an offence against this Act or any regulations made there under has been committed by a body corporate, any person who at the time of the commission of the offence was a director, a chief executive, an officer or a representative of the body corporate or was purporting to act in such capacity, is deemed to have committed that offence unless he proves that the offence was committed without his consent or connivance and 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.
- (2) Where a person who is an employee of another person contravenes any provision of this Act, the person for or on behalf of whom the employee is acting shall be deemed to have contravened such provision.
- (3) Without prejudice to the generality of subsection (2), where any representative of the holder of a Capital Markets Services Licence contravenes any provision of this Act, such holder shall be deemed to have contravened such provision.
- (4) For the purposes of this section, a director of a corporation includes—
- (a) a person occupying or acting in the position of director of the corporation, by whatever name called, and whether or not validly appointed to occupy or duly authorised to act in the position;

- (b) a person in accordance with whose directions or instructions the directors of the corporation are accustomed to act; and
- (c) if the corporation is incorporated outside Malaysia–
 - (i) a member of the corporation’s board;
 - (ii) a person occupying or acting in the position of director of the corporation’s board, by whatever name called, and whether or not validly appointed to occupy or duly authorised to act in the position; and
 - (iii) a person in accordance with whose directions or instructions the members of the corporation’s board are accustomed to act.

Falsification of records

- 368.** (1) A person shall not, in any books in relation to the business of a stock exchange, futures exchange, an approved clearing house and a holder of a Capital Markets Services Licence whether or not kept under this Act or the regulations made under this Act–
- (a) in any manner enter, record or store, or cause to be entered, recorded or stored, any matter that is false or misleading in any material particular;
 - (b) in any manner falsify or cause to be falsified, any matter that–
 - (i) is entered, recorded or stored;
 - (ii) has been prepared for the purpose of being entered, recorded or stored; or
 - (iii) has been prepared for use in compiling other matters to be entered, recorded or stored; or
 - (c) fail to enter, record or store any matter with intent to falsify the records or any part of the records intended to be compiled from that matter.
- (2) A person who contravenes subsection (1) 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.

False reports to Commission, exchange or approved clearing house

- 369.** A person who–
- (a) with intent to deceive, makes or furnishes; or
 - (b) knowingly authorises or permits the making or furnishing of,

any false or misleading statement or report to the Commission, a stock exchange, a futures exchange or an approved clearing house relating to–

- (A) dealings in securities or trading in futures contracts;
- (B) the affairs of a listed corporation;
- (C) any matter or thing required by the Commission for the due administration of this Act; or
- (D) the enforcement of the rules of a stock exchange, futures exchange or approved clearing house,

commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding ten years or to both.

Attempts, abetments and conspiracies

370. A person who–

- (a) attempts to commit any offence under this Act;
- (b) does any act in furtherance of the commission of any offence under this Act; or
- (c) abets or is engaged in a criminal conspiracy to commit any offence under this Act whether or not the offence is committed in consequence thereof,

commits such offence and shall, on conviction, be punished with or be liable to the penalty provided for such offence.

Destruction, concealment, mutilation and alteration of records

371. A person who–

- (a) destroys, conceals, mutilates or alters; or
- (b) sends or attempts to send or conspires with any other person to remove from its premises or send out of Malaysia,

any record or account required to be kept or maintained under this Act or rules of the stock exchange, futures exchange or approved clearing house with intent to defraud any person, or to prevent, delay or obstruct the carrying out or the exercise of any power under this Act commits an offence and shall, on conviction, be liable to a fine not exceeding ten million ringgit or to imprisonment for a term not exceeding ten years or to both.

General penalty

372. (1) A person who contravenes any requirement or provision of this Act, commits an offence under this Act and, where no penalty is expressly provided, shall, on

conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding five years or to both.

- (2) In the case of a continuing offence the offender, in addition to the penalties under subsection (1), shall, on conviction, be liable to a fine not exceeding five thousand ringgit for every day or part of a day during which the offence continues after conviction.

Compounding of offences

- 373.** (1) The Chairman of the Commission may, with the consent in writing of the Public Prosecutor, compound any offence committed by any person under Part II, III, VI, VII, X or XII or any regulations made thereunder, by accepting from the person reasonably suspected of having committed such offence a sum of money not exceeding the maximum fine (including the daily fine in the case of a continuing offence, if any) for that offence.
- (2) Upon receipt of the payment under subsection (1), no further proceedings shall be taken against such person in respect of such offence and where possession has been taken of any books or any other thing, such books or things may be released subject to such conditions as may be imposed in accordance with the conditions of the compound.
 - (3) All amounts received by the Commission under this section shall be paid into and form part of the Federal Consolidated Fund.

Convicted persons liable to pay compensation

- 374.** A person who is convicted of an offence under Part V or VI is liable to pay such compensation as may be determined by the court to any person who has suffered loss or damage as a result of the offence committed by the convicted person.

Conduct of prosecution

- 375.** (1) No prosecution for any offence under this Act shall be instituted except with the consent in writing of the Public Prosecutor.
- (2) Any officer authorised in writing by the Public Prosecutor, may prosecute any case in respect of any offence committed under this Act.
 - (3) For the purpose of subsection (2), "officer" has the meaning assigned to it in section 2 of the Securities Commission Act 1993.

Indemnity

- 376.** No civil liability shall be incurred by—
- (a) a stock exchange, a futures exchange, an exchange holding company, an approved clearing house or a central depository; and

- (b) any person acting on behalf of a stock exchange, a futures exchange, an exchange holding company, an approved clearing house or a central depository, including—
 - (i) any member of the board of a stock exchange, a futures exchange, an exchange holding company, an approved clearing house or a central depository or any member of any committee established by any such board;
 - (ii) any officer of a stock exchange, a futures exchange, an exchange holding company, an approved clearing house or a central depository; and
 - (iii) any agent of, or any person acting under the direction of a stock exchange, a futures exchange, an exchange holding company, an approved clearing house or a central depository,

for, on account of, or in respect of anything done, any statement made or omitted to be done or made, in connection with the discharge or performance or purported discharge or performance of any duties under the securities laws or the rules of a stock exchange, a futures exchange, an exchange holding company, an approved clearing house or a central depository or in the exercise or intended exercise of any power under the securities laws or such rules, where such act, statement or omission was done in good faith.

Guidelines and practice notes of Commission

- 377.** (1) The Commission may, generally in respect of this Act or in respect of any particular provision of this Act, issue such guidelines and practice notes as the Commission considers desirable.
- (2) The Commission may revoke, vary, revise or amend the whole or any part of any guidelines and practice notes issued under this section.
- (3) Subject to this Act or unless the contrary intention is expressly stated, a person to whom the guideline or practice note referred to in subsection (1) apply, shall give effect to such guideline or practice note within such period as may be specified by the Commission.
- (4) Where a person referred to in subsection (3) contravenes or fails to give effect to any guideline or practice note issued by the Commission, the Commission may take any one or more of the actions set out in section 354, 355 or 356 as it thinks fit.

Power to make regulations

- 378.** (1) The Commission may with the approval of the Minister, make such regulations as may be—
- (a) required or permitted by securities law to be prescribed by regulations;

- (b) necessary or expedient for–
 - (i) giving full effect to the provisions of this Act;
 - (ii) carrying out or achieving the objects and purposes of this Act; or
 - (iii) the further, better or more convenient implementation of the provisions of this Act.
- (2) Without prejudice to the generality of subsection (1), regulations made under this section may provide that, subject to any terms and conditions prescribed, all or any of the provisions of this Act–
 - (a) shall not have effect in relation to any specified person or to any person who is a member of a specified class of persons–
 - (i) who is or may be a holder of a Capital Markets Services Licence by reason only of his doing anything which is merely incidental to another business;
 - (ii) who does not carry on the business of dealing in securities or trading in futures contracts for or on behalf of any other person; or
 - (iii) who is a holder of a Capital Markets Services Licence by reason only of the entering into by him of any specified transaction or class of transactions;
 - (b) shall not have effect in relation to the representative of any person referred to in paragraph (a); or
 - (c) shall have effect in relation to any person referred to in paragraph (a) or (b) to such extent as may be prescribed.
- (3) Without prejudice to the generality of subsection (1), regulations may be made in matters specified in Schedule 10.
- (4) Nothing in paragraph 28 in Schedule 10 shall prevent a stock exchange from making rules on any matter mentioned in that paragraph if those rules have been approved by the Commission, but any such rules shall have effect only to the extent that they are consistent with the regulations made under this Act.

Settlement of disputes

379. To promote and maintain a fair, efficient and orderly capital market–

- (a) the rules of a stock exchange, futures exchange, central depository or an approved clearing house; or
- (b) regulations made under section 378,

may make provisions for the settlement of dispute–

- (A) between the holders of a Capital Markets Services Licence who carries on the business of dealing in securities;
- (B) between the holders of a Capital Markets Services Licence who carries on the business of trading in futures contracts;
- (C) between a participating organisation and a stock exchange;
- (D) between an affiliate and a futures exchange;
- (E) between a participant and an approved clearing house;
- (F) between an affiliate and an approved clearing house;
- (G) between a holder of a Capital Markets Services Licence and its clients; or
- (H) between persons involved in a capital market transaction.

Power to amend Schedules

- 380.** (1) The Minister may, on the recommendation of the Commission, from time to time by order published in the *Gazette*, vary, delete, add to, substitute for, or otherwise amend any of the Schedules in this Act and upon such publication, such Schedule as varied, deleted, added to, substituted for or otherwise amended, shall come into full force and effect and shall be deemed to be an integral part of this Act as from the date of such publication, or from such later date as may be specified in the order.
- (2) The Minister in varying, deleting or substituting any of the schedules referred to in subsection (1) may impose such terms and conditions as he thinks necessary.
- (3) In making the order under subsection (1), the Minister shall have regard to the interests of the public.