

**PART II**  
**SECURITIES AND FUTURES MARKETS**

**DIVISION 1**

**Markets**

**Establishment of stock markets or futures markets**

7. (1) A person shall not establish, operate or maintain, or assist in establishing, operating or maintaining, or hold himself out as providing, operating or maintaining, a stock market that is not—
- (a) a stock market of a stock exchange;
  - (b) a stock market of an exchange holding company that is itself approved as a stock exchange;
  - (c) an exempt stock market; or
  - (d) a registered electronic facility under subsection 34(1).
- (2) A person shall not establish, operate or maintain, or assist in establishing, operating or maintaining, or hold himself out as providing, operating or maintaining, a futures market that is not—
- (a) a futures market of a futures exchange;
  - (b) a futures market of an exchange holding company that is itself approved as a futures exchange;
  - (c) an exempt futures market; or
  - (d) a registered electronic facility under subsection 34(1).
- (3) The Minister may, by order published in the *Gazette*—
- (a) declare a particular stock market or futures market, or a stock market or futures market included in a particular class of stock markets or futures markets, to be an exempt stock market or exempt futures market for the purposes of this Act subject to such terms and conditions as he thinks reasonable and appropriate after having regard to, among other things,—
    - (i) the types of securities or futures contracts traded or to be traded;
    - (ii) the types of participants;
    - (iii) the types of investors; or
    - (iv) the volume of trading,

relating to the particular stock market or futures market, or stock market or futures market included in the particular class of stock markets or futures markets; and

- (b) revoke any declaration made under paragraph (a) or vary any term or condition as may be specified in the declaration, after having regard to, among other things,—
  - (i) any breach of the terms and conditions specified in the declaration; or
  - (ii) such other matters as the Minister thinks fit.
- (4) For the purposes of this section, the facilities specified in Schedule 1 that are—
  - (a) established and operated by Bank Negara; or
  - (b) operated by or on behalf of Bank Negara,shall be deemed to be exempted under subsection (3).
- (5) A person who contravenes subsection (1) or (2) 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.

## **DIVISION 2**

### **Market Institutions**

#### *Subdivision 1 – Exchanges and exchange holding company*

#### **Power of Minister to approve stock exchange or futures exchange**

- 8.** (1) An application for the approval of a body corporate as a stock exchange or futures exchange may be made in writing to the Minister.
- (2) The Minister may in writing, on the recommendation of the Commission, approve a body corporate as a stock exchange or futures exchange, subject to any terms and conditions as he thinks fit, if he is satisfied that—
  - (a) the body corporate will ensure that, as far as is reasonably practicable, it will operate an orderly and fair market in relation to securities and futures contracts that are traded through its facilities;
  - (b) the body corporate will manage any risks associated with its business and operations prudently;
  - (c) the body corporate, in discharging its obligations under paragraph (a), will not act contrary to the public interest and in particular the interest of investors;

- (d) the body corporate is able to take appropriate action against its participating organisations or affiliates to whom the rules apply for any breach of its rules;
- (e) the rules of the body corporate make satisfactory provision–
  - (i) for an orderly and fair market in relation to the securities or futures contracts that are traded through its facilities;
  - (ii) for the proper regulation and supervision of its participating organisations or affiliates;
  - (iii) for the exclusion of persons who are not of good character and high business integrity from being recognised as participating organisations or affiliates;
  - (iv) for the expulsion, suspension or disciplining of its participating organisation or affiliates and any person acting on behalf of such participating organisation or affiliates, for conduct that is inconsistent with just and equitable principles in the transaction of business or for a contravention of or failure to comply with the rules of the stock exchange or futures exchange;
  - (v) with respect to the conditions under which securities may be listed for trading in the market proposed to be conducted by the body corporate or under which futures contracts may be traded on the market through its facilities;
  - (vi) with respect to the conditions governing dealings in securities or trading in futures contracts by its participating organisations or affiliates;
  - (vii) with respect to the class of securities or futures contracts that may be dealt in or traded on its facilities; and
  - (viii) generally for the carrying on of the business of the proposed stock exchange or futures exchange with due regard to the need for the protection of investors and public interest;
- (f) the body corporate shall at all times have sufficient financial, human and other resources to ensure the provision of–
  - (i) an orderly and fair market in relation to securities or futures contracts that are traded through its facilities;
  - (ii) adequate and properly equipped premises for the conduct of its business;
  - (iii) competent personnel for the conduct of its business; and
  - (iv) automated systems with adequate capacity, security arrangements and facilities to meet emergencies; and

- (g) the interest of the public or the proper regulation of the market will be served by the granting of this approval.
- (3) An application for approval under subsection (1) shall be sent to the Commission, whereupon the Commission shall submit to the Minister such application together with its recommendation.
- (4) An applicant under subsection (1) shall provide such information as the Minister or the Commission considers necessary in relation to the application.
- (5) Without limiting the generality of the terms and conditions specified in subsection (2), the Minister may in writing, on the recommendation of the Commission, amend, revoke or impose new terms and conditions, if the Minister is satisfied that it is appropriate to do so for the protection of investors or in the public interest or for the proper regulation of the stock market or futures market.

### **Commission to approve amendment to rules of stock exchange, futures exchange or approved clearing house**

9. (1) A stock exchange, futures exchange or approved clearing house shall as soon as practicable, submit or cause to be submitted to the Commission for its approval any proposed rules or any proposed amendments to existing rules.
- (2) No amendment to the rules of a stock exchange, futures exchange or approved clearing house shall have effect unless it has been approved by the Commission under subsection (5).
- (3) Where a stock exchange, futures exchange or approved clearing house proposes to make any amendment to its rules, the stock exchange, futures exchange or approved clearing house shall submit to the Commission—
- (a) the text of the proposed amendment; and
  - (b) an explanation of the purpose of the proposed amendment.
- (4) Where—
- (a) proposed rules or amendments to existing rules involve the introduction of a class of futures contracts, the instrument in respect of which is a commodity, to be offered for trading on a futures market of the futures exchange; and
  - (b) the Minister responsible in respect of the commodity is the Minister for the time being charged with the responsibility for plantation industries and commodities,
- the Commission shall consult that Minister before notifying the futures exchange of its decision under subsection (5).
- (5) The Commission shall, within six weeks after the receipt of any proposed amendment under subsection (1), give notice in writing to the stock exchange,

futures exchange or approved clearing house that it approves or disapproves of the proposed amendment or any part of the proposed amendment, as the case may be.

- (6) The Commission may, by notice in writing, declare any class of rules of a stock exchange, futures exchange or approved clearing house to be a class of rules whose amendments do not require the approval of the Commission under subsection (5), and accordingly, any amendment to the rules of a stock exchange, futures exchange or approved clearing house that belongs to that class shall, subject to subsections (7) and (8), have effect notwithstanding that they have not been so approved under subsection (5).
- (7) Where the Commission is of the opinion that any amendment to the rules of a stock exchange, futures exchange or approved clearing house made under subsection (6) does not fall within the class of rules declared by the Commission under that subsection as not requiring its approval, the Commission may, after consultation with the stock exchange, futures exchange or approved clearing house, require the stock exchange, futures exchange or approved clearing house to submit such amendment for its approval under subsection (5).
- (8)
  - (a) Where a rule amended by the stock exchange, futures exchange or approved clearing house under subsection (6) is the subject of a requirement made by the Commission under subsection (7), such amendment shall cease to have effect from the date of the Commission making such a requirement or such later date as the Commission may determine.
  - (b) This subsection shall not have effect until a reasonable time has been given to the stock exchange, futures exchange or approved clearing house to notify the persons affected by such amendment.
- (9) Notwithstanding the provisions of this section, the Commission may, from time to time, after consultation with the stock exchange, futures exchange or approved clearing house, by written notice require the stock exchange, futures exchange or approved clearing house to amend or supplement its constitution or any of its rules in such manner and within such period as may be specified in the notice.
- (10) A stock exchange, futures exchange or approved clearing house which contravenes subsection (3) or which contravenes a requirement made under subsection (7) or a written notice made under subsection (9) commits an offence.

### **Appointment of directors of exchange holding company, stock exchange and futures exchange**

10. (1) In relation to an exchange holding company, a stock exchange or futures exchange other than a stock exchange or futures exchange that is referred to in subsection (2)–
  - (a) one third of the number of directors on the board of such exchange holding company, stock exchange or futures exchange, as the case may be, shall

be appointed by the Minister, in consultation with the Commission, to be public interest directors of the exchange holding company, stock exchange or futures exchange and, notwithstanding the provision of any other written law, such public interest directors so appointed–

- (i) shall have the same rights, powers, duties and obligations, liberties and privileges as any director of the exchange holding company, stock exchange or futures exchange; and
    - (ii) shall hold office for a period specified by the Minister who may at any time revoke such an appointment; and
  - (b) no person other than a public interest director referred to in paragraph (a) shall accept appointment or election as a director of the exchange holding company, stock exchange or futures exchange unless the concurrence of the Commission is obtained.
- (2) Notwithstanding the provisions of subsection (1), in relation to the board of a stock exchange or futures exchange that is a subsidiary of an exchange holding company, no person shall accept appointment or election as a director of such stock exchange or futures exchange unless the concurrence of the Commission is obtained.
- (3) The Minister shall, in consultation with the Commission, appoint one person from amongst the public interest directors so appointed under subsection (1) to be the non-executive Chairman of the board of the exchange holding company, a stock exchange or futures exchange, as the case may be, whose remuneration shall be determined by the board of the exchange holding company, stock exchange or futures exchange, as the case may be.
- (4) Where the concurrence of the Commission is required under subsection (1) or (2), the Commission may refuse to concur if–
- (a) any proposed director is an undischarged bankrupt, whether within or outside Malaysia;
  - (b) a judgement debt against the proposed director has not been satisfied in whole or in part;
  - (c) the proposed director has, whether within or outside Malaysia, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation;
  - (d) the proposed director–
    - (i) has been convicted, whether within or outside Malaysia, of an offence, involving fraud or dishonesty or the conviction for which involved a finding that he acted fraudulently or dishonestly; or
    - (ii) has been convicted of an offence under the securities laws; or

- (e) the Commission is not satisfied that the proposed director is a person of integrity and is fit and proper to be a director.
- (5) For the purposes of subsection (1)–
- (a) the Minister may, on the recommendation of the Commission, reduce the number of public interest directors on the board of the exchange holding company, stock exchange or futures exchange, as the case may be; and
  - (b) all public interest directors appointed under subsection (1) shall retire after a term of three years or on the expiry of the term specified by the Minister under subparagraph(1)(a)(ii) but are eligible for reappointment.

## **Duties of exchange**

- 11.** (1) For the purposes of this section, sections 12, 13 and 27–
- (a) “exchange” refers to a stock exchange or a futures exchange; and
  - (b) “relevant person” means a participating organisation or an affiliate.
- (2) It shall be the duty of an exchange to ensure, so far as may be reasonably practicable, an orderly and fair market in the securities or futures contracts that are traded through its facilities.
- (3) In performing its duty under subsection (2), the exchange shall–
- (a) act in the public interest having particular regard to the need for the protection of investors; and
  - (b) ensure that where any interests that it is required to serve under any law relating to corporations conflict with the interest referred to in paragraph (a), the latter shall prevail.
- (4) It shall be the duty of the exchange to take appropriate action as may be provided for under its rules for the purpose of monitoring or securing compliance with such rules.
- (5) An exchange shall immediately notify the Commission if it becomes aware of–
- (a) any matter which adversely affects, or is likely to adversely affect, the ability of any relevant person to meet its obligations in respect of its business of dealing in securities or trading in futures contracts, including the ability of any relevant person to comply with the minimum financial requirements as may be prescribed under this Act; or
  - (b) any irregularity, breach of any provision of the securities laws or the rules of the exchange or approved clearing house, or any other matter which, in the opinion of the exchange, indicates or may indicate, that the financial

standing or financial integrity of any relevant person or of the chief executive or directors of the relevant person is in question or may reasonably be affected.

- (6) Without prejudice to subsection (5), when an exchange reprimands, fines, suspends, expels or otherwise disciplines any of its relevant person, it shall, within seven days, give to the Commission in writing the following particulars:
  - (a) the name and address of the business of the relevant person;
  - (b) the reason for and the nature of the action taken;
  - (c) the amount of the fine;
  - (d) the period of suspension, if any; and
  - (e) any other disciplinary action taken.
- (7) An exchange shall at all times have sufficient financial, human and other resources to ensure the provision of—
  - (a) an orderly and fair market in relation to securities or futures contracts that are traded through its facilities;
  - (b) adequate and properly equipped premises for the conduct of its business;
  - (c) competent personnel for the conduct of its business; and
  - (d) automated systems with adequate capacity, security arrangements and facilities to meet emergencies.

### **Withdrawal of approval of exchange**

12. (1) The Minister may, on the recommendation of the Commission, by notice published in the *Gazette*, and by such other means as the Commission considers appropriate—
  - (a) withdraw an approval granted under section 8 to an exchange, with effect from the date specified in the notice; or
  - (b) direct the exchange to cease to provide or operate such facilities, or to cease to provide such services, as are specified in the notice, with effect from the date specified in the notice.
- (2) The Minister shall not withdraw an approval or issue a direction under subsection (1) unless the Minister, on the recommendation of the Commission, is satisfied that it is appropriate to do so for the protection of investors, or in the public interest or for the proper regulation of markets in securities or futures contracts, where any of the following circumstances occurs:
  - (a) the exchange ceases to operate its stock market or futures market, as the case may be;

- (b) the exchange is being wound up or otherwise dissolved, whether within or outside Malaysia;
  - (c) the exchange has contravened any term or condition of its approval or is charged with any offence under any securities laws;
  - (d) the exchange has failed to comply with a condition, requirement or direction given under section 26, 354 or 355;
  - (e) any information provided for the purposes of section 8 was false or misleading in a material particular;
  - (f) a judgement debt against the exchange has not been satisfied in whole or in part;
  - (g) a receiver, a receiver and manager, or equivalent person has been appointed, whether within or outside Malaysia, in respect of any property of the exchange;
  - (h) the exchange has, whether within or outside Malaysia, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation;
  - (i) the exchange on its own accord applies to the Minister to withdraw the approval as a stock exchange or a futures exchange granted to it and the Minister, on the recommendation of the Commission, thinks it fit to do so.
- (3) For the purposes of paragraph (2)(a), an exchange shall be deemed to have ceased to operate its stock market or futures market, if it has ceased to operate its stock market or futures market, as the case may be, for a period of one month unless it has obtained the prior approval of the Minister to do so.
- (4) Notwithstanding the withdrawal of an approval or the issuance of a direction under subsection (1), the Minister may permit the exchange to continue, on or after the date on which the withdrawal or direction is to take effect, to carry on such activities affected by the withdrawal or direction as the Minister may specify in the notice published under that subsection for the purpose of—
- (a) closing down the operations of the exchange or ceasing to provide the services as specified in the notice; or
  - (b) protecting the interest of investors or the public interest.
- (5) Where the Minister has granted permission to an exchange under subsection (4), the exchange shall not, by reason of its carrying on the activities in accordance with the permission, be regarded as having contravened section 7.
- (6) The Minister shall not take any action under subsection (1) without giving an exchange an opportunity to be heard.

- (7) Where an exchange has ceased to comply with any term or condition specified in section 8, or where the Minister receives recommendation from the Commission under this section, the Minister may, instead of withdrawing the approval under subsection (1), direct that trading on the exchange be suspended until such time as the exchange has, to the satisfaction of the Minister, complied with such term or condition, or rectified the matter forming the basis of the recommendation by the Commission, or until the Minister revokes the direction.
- (8) The Minister shall give the exchange not less than fourteen days' notice in writing of his intention to direct suspension of trading under subsection (7) and the notice shall specify the grounds for the suspension.

### **Effect of withdrawal of approval of an exchange**

- 13. Any withdrawal of approval or direction issued under section 12 shall not operate so as to—
  - (a) avoid or affect any agreement, transaction or arrangement entered into on the stock market or futures market operated by an exchange, as the case may be, whether the agreement, transaction or arrangement was entered into before or, where subsection 12(4) applies, after the withdrawal of the approval or issuance of the direction under section 12; or
  - (b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

### *Subdivision 2 – Exchange holding company*

#### **Exchange holding company**

- 14. No body corporate shall be an exchange holding company or a holding company of an exchange holding company, unless the body corporate has been approved as an exchange holding company under section 15.

#### **Power of Minister to approve exchange holding company**

- 15. (1) An application for approval of a body corporate as an exchange holding company may be made in writing to the Minister.
- (2) The Minister may in writing, on the recommendation of the Commission, approve a body corporate as an exchange holding company, subject to any terms and conditions as he thinks fit, if he is satisfied that it is appropriate to do so—
  - (a) for the protection of investors;
  - (b) in the public interest; or
  - (c) for the proper regulation of a stock market of a stock exchange or a futures market of a futures exchange.

- (3) An application for approval under subsection (1) shall be sent to the Commission, whereupon the Commission shall submit to the Minister such application together with its recommendation.
- (4) An applicant under subsection (1) shall provide such information as the Minister or the Commission considers necessary in relation to the application.
- (5) The Minister may, on the recommendation of the Commission, impose different conditions or restrictions or give different directions with respect to different applications for approval as an exchange holding company.
- (6) For the avoidance of doubt—
  - (a) to the extent that an exchange holding company would be holding itself out as, or is providing, operating or maintaining, a stock market of a stock exchange, the exchange holding company shall obtain an approval in accordance with the provisions of section 8;
  - (b) to the extent that an exchange holding company would be holding itself out as, or is establishing or maintaining, a central depository, the exchange holding company shall obtain an approval in accordance with the provisions of sections 4 and 5 of the Securities Industry (Central Depositories) Act 1991;
  - (c) to the extent that an exchange holding company is holding itself out as, or is providing clearing and settlement services of—
    - (i) a clearing house of a stock exchange; or
    - (ii) a clearing house of a futures exchange,the exchange holding company shall obtain approval in accordance with the provisions of section 38; and
  - (d) to the extent that an exchange holding company is holding itself out as, or is providing, operating or maintaining, a futures market of a futures exchange, the exchange holding company shall obtain an approval in accordance with the provisions of section 8.
- (7) Notwithstanding the provisions of this Act and the Securities Industry (Central Depositories) Act 1991, the Minister may, in his discretion, exempt the applicant from any of the requirements of section 8 or 38 of this Act or sections 4 and 5 of the Securities Industry (Central Depositories) Act 1991, as he thinks fit, for the purposes of giving his approval.
- (8) Notwithstanding the provisions of section 38, the Commission may, with the approval of the Minister, exempt the applicant from any of the requirements of section 38, as it thinks fit, for the purpose of granting approval to an exchange holding company as an approved clearing house.

## Annual Regulatory Report on compliance with ongoing requirements

16. (1) Within three months after the end of each financial year, a body corporate that has been approved as a stock exchange, futures exchange or an exchange holding company shall prepare and submit to the Commission a regulatory report on the extent to which it has complied with the requirements under sections 11 and 21, and its rules, during the financial year.
- (2) The Commission shall forthwith send a copy of the regulatory report submitted under subsection (1) to the Minister.
- (3) For the purposes of subsection (1)–
- (a) where a stock exchange or a futures exchange is a subsidiary of an exchange holding company, the Commission may specify the entity that is required to submit a regulatory report; and
  - (b) the Commission and the stock exchange, futures exchange or the exchange holding company, as the case may be, may determine between themselves the scope and content of the regulatory report.
- (4) Upon receipt of the regulatory report under subsection (1), the Commission may at any other time it thinks necessary–
- (a) conduct a regulatory audit of a body corporate that has been approved as a stock exchange, a futures exchange or an exchange holding company, as the case may be;
  - (b) appoint any independent person to assist the Commission in a regulatory audit conducted under this subsection; and
  - (c) charge the costs related to the conduct of the regulatory audit to the stock exchange, futures exchange or the exchange holding company, as the case may be.
- (5) The Commission shall as soon as practicable submit to the Minister a copy of the report of the regulatory audit conducted by the Commission under subsection (4).
- (6) For the purposes of this section–
- (a) “regulatory audit” refers to an audit on the extent to which a stock exchange, a futures exchange or an exchange holding company, as the case may be, has complied with its regulatory responsibilities, duties or functions under this Act, the rules and any securities laws; and
  - (b) “regulatory report” is a report that is submitted under subsection (1).

## **Special report by exchange holding company about compliance with ongoing requirements**

17. Notwithstanding the provisions of section 16, the Minister may, at any time, require a body corporate that has been approved as a stock exchange, a futures exchange or an exchange holding company, as the case may be, to prepare and submit to the Minister a special report on the extent to which the stock exchange, futures exchange or the exchange holding company, as the case may be, has complied with the requirements of the securities laws and rules.

## **Withdrawal of approval of exchange holding company**

18. (1) The Minister may, on the recommendation of the Commission, by a notice published in the *Gazette*, and by such other means as the Commission thinks appropriate—
- (a) withdraw an approval granted under section 15 to an exchange holding company, with effect from the date specified in the notice; or
  - (b) direct an exchange holding company to cease to provide or operate such facilities, or provide such services, as are specified in the notice, with effect from the date specified in the notice.
- (2) The Minister shall not withdraw an approval or issue a direction under subsection (1) unless the Minister, on the recommendation of the Commission, is satisfied that it is appropriate to do so for the protection of investors, or in the public interest or for the proper regulation of the markets in securities or futures contracts, where any of the following circumstances occurs:
- (a) the exchange holding company ceases to be a holding company of a stock exchange or a futures exchange, as the case may be;
  - (b) the exchange holding company is being wound up or otherwise dissolved, whether within or outside Malaysia;
  - (c) the exchange holding company has contravened any term or condition of its approval or is charged with any offence under any securities laws;
  - (d) the exchange holding company has failed to comply with a condition, requirement or direction given under section 26, 354 or 355;
  - (e) any information provided for the purposes of section 15 was false or misleading in a material particular; or
  - (f) an exchange holding company on its own accord applies to the Minister to withdraw the approval as an exchange holding company granted to it and the Minister, on the recommendation of the Commission, thinks fit to do so.
- (3) Notwithstanding the withdrawal of an approval or the issuance of a direction under subsection (1), the Minister may permit the exchange holding company to

continue, on or after the date on which the withdrawal or direction is to take effect, to carry on such activities affected by the withdrawal or direction as the Minister may specify in the notice published under that subsection for the purposes of—

- (a) closing down the operations of the exchange holding company or ceasing to provide the services specified in the notice; or
  - (b) protecting the interest of the investors or the public interest.
- (4) Where the Minister has granted permission to an exchange holding company under subsection (3), the exchange holding company shall not, by reason of its carrying on the activities in accordance with the permission, be regarded as having contravened sections 7, 14 and 37 of this Act and section 3 of the Securities Industry (Central Depositories) Act 1991, if applicable.
- (5) The Minister shall not take any action under subsection (1) without giving an exchange holding company an opportunity to be heard.

### **Effect of withdrawal of approval of exchange holding company**

19. Any withdrawal of an approval or issuance of a direction under section 18 shall not operate so as to prejudice sections 13 and 40 of this Act and section 5B of the Securities Industry (Central Depositories) Act 1991.

### **Listing of exchange holding company on stock exchange**

20. (1) Where the approval of the Commission under section 212 has been granted for the securities of an exchange holding company to be listed on a relevant stock exchange, the exchange holding company shall enter into such arrangements as the Commission may require—
- (a) for dealing with possible conflicts of interest that may arise from the listing on the relevant stock exchange;
  - (b) for the purpose of ensuring the integrity of trading of the securities of the exchange holding company; and
  - (c) for the compliance with obligations as a listed corporation if the exchange holding company was to become a listed corporation,
- and the exchange holding company shall comply with such requirements.
- (2) The listing requirements of the relevant stock exchange shall be deemed to allow the Commission, instead of the relevant stock exchange, to make decisions and to take action, or to allow the Commission to require the relevant stock exchange to make decisions and to take action on the Commission's behalf on—

- (a) the admission to or removal of the exchange holding company from the official list of the relevant stock exchange;
  - (b) the stopping or suspension of the securities of the exchange holding company from being listed on the relevant stock exchange; and
  - (c) such other matters as the Commission thinks fit for the purpose of subsection (1).
- (3) An arrangement under subsection (1) may provide for the exchange holding company to pay such fees to the Commission as the Commission may determine for services provided by the Commission under the arrangement, or otherwise provided under or for the purposes of this section.
- (4) Without prejudice to the provisions of section 9, the Commission may, by notice in writing–
  - (a) modify the listing requirements of the relevant stock exchange for the purpose of applying to the listing for quotation or trading of the securities of the exchange holding company; and
  - (b) exempt the exchange holding company from any listing requirement of the relevant stock exchange.
- (5) For the purposes of this section, the “relevant stock exchange” means the stock exchange of the exchange holding company.

### **Duties of exchange holding company**

- 21.** (1) It shall be the duty of an exchange holding company to ensure–
- (a) insofar as may be reasonably practicable–
    - (i) an orderly and fair market in relation to securities that are traded on the market through the facilities of the stock exchange of the exchange holding company or through the facilities of any of its subsidiaries that is duly approved as a stock exchange, as the case may be;
    - (ii) an orderly and fair market for trading in futures contracts on the futures market through the facilities of the futures exchange of the exchange holding company or through the facilities of any of its subsidiaries that is duly approved as a futures exchange, as the case may be;
    - (iii) that there are orderly dealings in securities deposited or lodged with a central depository through the facilities of a central depository of the exchange holding company or through the facilities of any of its subsidiaries that is duly approved as a central depository, as the case may be;

- (iv) that there are orderly, clear and efficient clearing and settlement arrangements for any transaction in securities cleared or settled through the facilities of a clearing house for a stock market of a stock exchange or through the facilities of any of the subsidiaries of an exchange holding company that is an approved clearing house, as the case may be; and
    - (v) that there are orderly, clear and efficient clearing and settlement arrangements for any transaction in futures contracts cleared or settled through the facilities of a clearing house for a futures market of a futures exchange or through the facilities of any of its subsidiaries that is duly approved as a clearing house of a futures exchange, as the case may be;
  - (b) the prudent risk management of its business and operations; and
  - (c) that the stock exchange, futures exchange, approved clearing house or central depository, as the case may be, comply with any lawful requirements placed on it under any securities laws and any other laws applicable to it.
- (2) In performing its duty under subsection (1) the exchange holding company shall—
  - (a) act in the public interest, having particular regard to the need for the protection of investors; and
  - (b) ensure that where its own interest or any interest that it is required to serve under any law relating to corporations conflicts with the interest referred to in paragraph (a), the latter shall prevail.
- (3) An exchange holding company shall immediately notify the Commission if it becomes aware of—
  - (a) any matter which adversely affects or is likely to adversely affect—
    - (i) the ability of the exchange holding company to meet its obligations in respect of its business as an exchange holding company, a stock exchange, a futures exchange, an approved clearing house or a central depository, as the case may be, including its ability to comply with any requirements as may be specified by the Commission, if applicable; or
    - (ii) the ability of any subsidiary of the exchange holding company to meet its obligations in respect of its business as a stock exchange, a futures exchange, an approved clearing house or a central depository, as the case may be, including the ability of any such subsidiary to comply with any requirement as may be specified by the Commission, if applicable; or
  - (b) any irregularity, breach of any provision of the securities laws, the rules of a stock exchange, a futures exchange, an approved clearing house or a

central depository, or any other matter which, in the opinion of the exchange holding company, indicates or may indicate, that the financial standing or financial integrity of any of its subsidiaries or the chief executive or directors of such subsidiary, as the case may be, is in question or may reasonably be affected.

- (4) Where an exchange holding company, which itself has been approved as a stock exchange under section 8, undertakes any function of a subsidiary that is approved as a stock exchange under section 8, such exchange holding company shall enter into such arrangements with the Commission as the Commission may determine as to how the duties and obligations of the exchange holding company and such subsidiary, under the securities laws, are satisfied.
- (5) Where an exchange holding company, which itself has been approved as a central depository under section 5 of the Securities Industry (Central Depositories) Act 1991, undertakes any function of a subsidiary that is approved as a central depository under section 5 of the Act, such exchange holding company shall enter into such arrangements with the Commission as the Commission may determine as to how the duties and obligations of the exchange holding company and such subsidiary, under the securities laws, are satisfied.
- (6) Where an exchange holding company, which itself has been approved as a futures exchange under section 8, undertakes any function of a subsidiary that is approved as a futures exchange under section 8, such exchange holding company shall enter into such arrangements with the Commission as the Commission may determine as to how the duties and obligations of the exchange holding company and such subsidiary, under the securities laws, are satisfied.
- (7) Where an exchange holding company which itself has been approved as a clearing house of a stock exchange or a futures exchange under subsection 38(4), undertakes any function of a subsidiary that is approved as an approved clearing house under subsection 38(4), such exchange holding company shall enter into such arrangements with the Commission as the Commission may determine as to how the duties and obligations of the exchange holding company and such subsidiary, under the securities laws, are satisfied.
- (8) Where the duties and obligations of a stock exchange, a futures exchange, an approved clearing house or a central depository, as the case may be, are discharged in accordance with the arrangements referred to in subsection (4), (5), (6) or (7), such duties and obligations shall be deemed to have been satisfied by both the exchange holding company and its subsidiary.
- (9) Where the rules of a subsidiary of an exchange holding company which is a stock exchange, a futures exchange, an approved clearing house or a central depository provide for such subsidiary to take any action, the exchange holding company shall have the power to take such action on behalf of the relevant subsidiary.
- (10) Nothing in subsection (9) shall preclude a subsidiary of an exchange holding company which is a stock exchange, a futures exchange, an approved clearing

house or a central depository from itself taking any action against any person to whom its rules apply but such subsidiary shall not take any action under its rules in the event the exchange holding company takes such action pursuant to subsection (9).

### **Risk Management Committee of exchange holding company**

22. An exchange holding company shall establish and maintain a committee, to be called the Risk Management Committee, to formulate policies on risk management matters relating to the activities of the exchange holding company and of its subsidiaries, and to submit such policies to the board of the exchange holding company for its consideration.

### **Restriction on exchange holding company from reducing its shareholding**

23. No exchange holding company shall reduce its shareholding in a stock exchange, a futures exchange, an approved clearing house or a central depository, as the case may be, to a level below seventy five per centum, or such other percentage as may be specified from time to time by the Minister, of the total issued and paid-up capital in the stock exchange, futures exchange, approved clearing house or central depository, as the case may be, without first obtaining the written approval of the Minister.

### **Disposal and acquisition of assets, etc.**

24. (1) Without prejudice to the provisions of section 23, where—

- (a) an exchange holding company;
- (b) a stock exchange;
- (c) a futures exchange;
- (d) an approved clearing house;
- (e) a central depository; or
- (f) any other relevant body corporate as defined under subsection 26(5),

intends to enter into an agreement or arrangement, to dispose of or acquire such assets or classes of assets of such value as may have been specified by the Commission, it shall give the Commission prior written notification of such intention.

- (2) Where the Commission makes a specification under subsection (1), it shall have regard to whether the assets referred to in the specification are integral to the operations of the exchange holding company, stock exchange, futures exchange, approved clearing house, central depository, or any other relevant body corporate, as the case may be, or significant in affecting the business direction of such persons.

## Control in shareholding of exchange holding company

25. (1) Notwithstanding section 24, no person shall enter into any agreement or arrangement to acquire any voting shares of an exchange holding company by which, if the agreement or arrangement is carried out, he would acquire, together with any other voting shares of the exchange holding company which were then already held by him, or by him and by persons associated with him, voting shares of five per centum or more of the aggregate of the nominal amount of all the voting shares in the exchange holding company, without first obtaining the prior written approval of the Minister.
- (2) An application for approval under subsection (1) shall be made by the person intending to acquire voting shares referred to therein and shall be sent to the Commission, whereupon the Commission shall submit such application, together with its recommendation to the Minister.
- (3) The Minister may grant his approval subject to such terms and conditions as he thinks fit to impose.

## Power to issue directions

26. (1) Where the Commission is satisfied that—
- (a) a conflict exists or may come into existence between—
- (i) the interest of a body corporate that has been approved as an exchange holding company, a stock exchange, a futures exchange, an approved clearing house, a central depository or a relevant body corporate, as the case may be; and
- (ii) the interest of the proper performance of the functions or duties conferred by this Act or any other law, on the exchange holding company, stock exchange, futures exchange, approved clearing house, central depository or the relevant body corporate, as the case may be; or
- (b) where the Commission is satisfied that such a conflict of interest has occurred or has existed in circumstances that make it likely that the conflict of interest will continue or be repeated,

then the Commission may serve a written notice on the exchange holding company, stock exchange, futures exchange, approved clearing house, central depository or relevant body corporate, as the case may be, stating the reasons in support of the ground for the notice and direct any of the aforementioned persons to forthwith take such steps as are specified in the notice, including steps in relation to any of its affairs, business or property for the purposes of remedying the conflict of interest or the matters occasioning the conflict of interest.

- (2) A notice served under subsection (1) shall take effect immediately.
- (3) A body corporate that has been served with a notice under subsection (1) shall not without reasonable excuse, fail to comply with the notice.
- (4) A body corporate that has been served with a notice under subsection (1) may appeal against the notice to the Minister not later than fourteen days after the date of service of the notice or such longer period if any, as the Commission may specify in the notice, but the notice shall take effect immediately notwithstanding that the appeal has been or may be made under this subsection.
- (5) For the purposes of this section, "relevant body corporate" means a body corporate of which an exchange holding company is a shareholder who, either alone or with any associated person, is entitled to exercise or control the exercise of more than thirty-three per centum of the aggregate of the nominal amount of all voting shares in the body corporate.

### **Closure of stock exchange or futures exchange**

- 27.** (1) The Minister may direct an exchange to close a stock market or a futures market of the exchange for a period not exceeding five business days if the Minister is of the opinion that an orderly and fair market for trading in securities on the stock market or trading in futures contracts on the futures market is being or is likely to be prevented because—
- (a) an emergency or natural disaster has occurred within Malaysia; or
  - (b) there exists an economic or financial crisis or any other circumstances within or outside Malaysia.
- (2) The Minister may extend the closure of the stock market or futures market under subsection (1) for any further periods each not exceeding five business days.
- (3) The Minister shall specify the grounds for the closure in the direction given under subsection (1) and the grounds for any extension of closure under subsection (2).
- (4) The Minister shall, as soon as may be practicable, give a copy of the direction under subsection (1) or extension under subsection (2) to an approved clearing house and direct the approved clearing house to do all that it is reasonably capable of doing to give effect to the direction under subsection (1) or extension under subsection (2) while the direction or extension remains in force.
- (5) In this section—
- "business day" means any day on which there is official trading on the exchange but for the closure;
- "fair market" includes but is not limited to a market that reflects the forces of supply and demand.

## Power of Commission in respect of stock exchange or futures exchange

28. (1) Where the Commission is satisfied that it is in the public interest, or it is appropriate to do so for the protection of investors, or to maintain fair and orderly market, the Commission may give written notice to a stock exchange, a futures exchange or an approved clearing house, where relevant, to—
- (a) prohibit the trading of particular securities or a particular class of securities made available by a corporation on the stock market of a stock exchange;
  - (b) terminate or suspend trading on the stock exchange or futures exchange;
  - (c) confine trading to liquidation of futures contracts positions;
  - (d) order the liquidation of all positions or any part thereof or the reduction in such positions;
  - (e) limit trading to a specific price range;
  - (f) modify trading days or hours;
  - (g) alter conditions of delivery;
  - (h) fix the settlement price at which positions are to be liquidated;
  - (i) require any person to act in a specified manner in relation to trading in securities or futures contracts or any class of securities or futures contracts;
  - (j) require margins or additional margins for any securities or futures contracts; and
  - (k) modify or suspend any of the rules of the stock exchange or futures exchange,
- as the case may be.
- (2) Where the Commission gives a notice to a stock exchange, a futures exchange or an approved clearing house under subsection (1), the Commission shall at the same time furnish to the Minister a written report setting out the reasons for the giving of the notice.
- (3) Any person who is aggrieved by any action taken by the Commission under this section may appeal to the Minister whose decision shall be final.
- (4) Notwithstanding any appeal under subsection (3), any action taken by the Commission under this section shall continue to have force and effect until such time as the Minister makes a decision on the appeal.
- (5) A stock exchange, a futures exchange or an approved clearing house, as the case may be, shall comply with the written notice given under subsection (1).

## **Provision of assistance to Commission**

- 29.** (1) An exchange holding company, a stock exchange, a futures exchange or an approved clearing house shall provide such assistance to the Commission, or to a person acting on behalf of or with the authority of the Commission, as the Commission or such person reasonably requires including the furnishing of such returns, and the provision of such information relating to the operations of an exchange holding company, a stock exchange, a futures exchange or an approved clearing house or in respect of such dealing in securities or trading in futures contracts or any other information as the Commission or such person may require for the proper administration of the securities laws.
- (2) A person acting on behalf of, or authorised by, the Commission shall be entitled at all reasonable times to full and free access for any of the purposes of this Act to the trading facility of a stock market of a stock exchange or a futures market of a futures exchange.
- (3) A person who refuses or fails, without lawful excuse, to allow a person acting on behalf of, or authorised by, the Commission, access in accordance with subsection (2) to the trading facility of a stock market of a stock exchange or a futures market of a futures exchange commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

## **Suspension order relating to stock exchange, futures exchange, approved clearing house or central depository**

- 30.** (1) Without prejudice to section 12, 27 or 28, where the Minister is satisfied that it is in the public interest, or it is appropriate to do so for the protection of investors or for the proper regulation of a stock exchange, a futures exchange, an approved clearing house or a central depository, the Minister may, on the recommendation of the Commission, make an order ("suspension order") relating to all or any of the following:
- (a) the functions of the board of the stock exchange, futures exchange, approved clearing house or central depository, or any member of its board;
- (b) the functions of any committee (including a subcommittee) established by a board referred to in paragraph (a); or
- (c) the functions of the principal officer, by whatever name called, who is responsible for the conduct of the business and operations of the stock exchange, futures exchange, approved clearing house or central depository, as the case may be.
- (2) For so long as a suspension order is in force, the following provisions shall apply:
- (a) none of the functions to which the order relates shall be performed by any board, committee or officer thereof;

- (b) any function to which paragraph (a) applies may be performed by such person as shall be specified in the order in relation to that function; and
  - (c) a person referred to in paragraph (a) shall not, by act or omission, either directly or indirectly, affect the manner in which functions therein referred to are performed unless the person to perform the functions under paragraph (b) requests for his assistance.
- (3) Subject to subsection (6), a suspension order shall continue in force for such period, being a period not exceeding six months, as shall be specified in the order.
- (4) A suspension order or any extension thereof under subsection (6) shall take effect when a copy of the order or notice of the extension is served under paragraph (7)(a) on the stock exchange, futures exchange, approved clearing house or central depository to which the order relates.
- (5) Without prejudice to subsection (4), where a suspension order is made or such an order is extended under subsection (6), the Commission shall, where it is practicable to do so, as soon as may be practicable, give a copy of the order or the notice of its extension, as the case may be, to the principal officer of the stock exchange, futures exchange, approved clearing house or central depository to which the order relates and to such members of the governing body thereof (if any) as the Commission may consider appropriate in the circumstances.
- (6) The Minister may, on the recommendation of the Commission, extend the period during which a suspension order is to remain in force for any further periods each not exceeding three months.
- (7) Where a suspension order is made or extended under this section, the Commission shall—
  - (a) forthwith serve a copy of the order or notice in writing of the extension on the stock exchange, futures exchange, approved clearing house or central depository to which the order relates; and
  - (b) cause the suspension order or the notice of the extension, as the case may be, to be published in the *Gazette*.
- (8) A person who contravenes a suspension order issued under subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding ten years or to both.
- (9) For the purposes of this section, “principal officer” includes a person, by whatever name called, who either individually or jointly with one or more other persons, is responsible for the conduct of the business and the administration of the stock exchange, futures exchange, approved clearing house or central depository.

## Power of Commission upon contravention of section 23, 24 or 25

31. (1) Notwithstanding any of the provisions in any memorandum and articles of association, the Companies Act 1965, or any rule of law, but subject to the provisions of this Act, where the Commission is satisfied that any person has contravened the provisions of section 23, 24 or 25, it may make a preliminary order in writing, imposing one or more of the following prohibitions or restrictions as may be applicable or appropriate in the circumstances of the contravention in respect of any shares which are the subject of the contravention:
- (a) prohibit the transfer of, or the carrying out of the agreement or arrangement to transfer, such voting shares, or, in the case of unissued shares, prohibit the transfer of, or the carrying out of the agreement or arrangement to transfer, the right to be issued with them;
  - (b) prohibit the exercise of any voting rights in respect of such shares;
  - (c) prohibit the issue of any further shares in right of such shares or in pursuance of any offer made to their holder; or
  - (d) except in liquidation, prohibit the payment of any sums due from the exchange holding company on such shares, whether in respect of capital or otherwise.
- (2) A preliminary order made under subsection (1) shall be served on the defaulting person as soon as is practicable, and may be publicised in such manner as the Commission thinks fit, if in the opinion of the Commission it needs to be publicised.
- (3) A preliminary order shall be binding on the defaulting person, on any person for the time being holding the voting shares to which such order applies, and on any other person specified in the order or to whom the order is directed.
- (4) No person shall be given an opportunity to be heard before the Commission makes a preliminary order under subsection (1) against him or which affects him in any manner.
- (5) Any defaulting person against whom a preliminary order has been made, or any other person prejudicially affected by such order, may within fourteen days of the service of the order on the defaulting person, make representations in writing to the Commission applying for the setting aside of the order on the ground that he had not contravened the provisions in relation to which the order has been made, or for a modification of the order on the ground that it would be just and proper to modify it for reasons to be specified in the representations.
- (6) The Commission may, after considering the representations made under subsection (5), either confirm, revoke or vary the preliminary order in such manner as it thinks fit.
- (7) Where the Commission confirms a preliminary order, it may make an order to the holder of the shares to which the preliminary order applies to, directing such holder to dispose of the shares.

- (8) The Commission may give any instruction or direction to the directors or officers of the exchange holding company, stock exchange, futures exchange, approved clearing house, central depository or any other relevant body corporate as defined under subsection 26(5), as the case may be, as may be necessary or requisite to give effect to any order of the Commission under this section, or as may be incidental, ancillary or consequential to such order.
- (9) Any transaction, including any agreement or arrangement in relation to any shares, which is in contravention of any preliminary order, or of any order confirmed under subsection (6), or of any instruction or direction given by the Commission under subsection (8), shall be void and of no effect.
- (10) A person who contravenes any preliminary order, any order confirmed under subsection (6), or any instruction or direction given under subsection (8), commits an offence and shall, on conviction, be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding five years or to both.
- (11) The satisfaction of the Commission under subsection (1) that the provisions of section 23, 24 or 25 have been contravened by any person may be arrived at regardless as to whether or not there is any prosecution of any person for such contravention.

### *Subdivision 3 – General*

#### **Publication of notice of suspension of trading or closure**

32. Where an action is taken by the Minister or the Commission under section 12, 18, 27, 28, 354 or 355, as the case may be, the Commission shall publish a notice of the action taken in such manner as it considers appropriate.

#### **Rights of stock exchange, futures exchange or approved clearing house not to be affected by laws relating to contracts**

33. Nothing in any law relating to contracts, to the extent of its inconsistency with the provisions of this Act or the rules of a stock exchange, futures exchange or approved clearing house, shall render unenforceable or otherwise adversely affect—
  - (a) any rights to be conferred on a stock exchange, a futures exchange or an approved clearing house in relation to securities or futures contracts, as the case may be, under this Act or its rules;
  - (b) any rights to be conferred on a party to a securities or futures contract entered into on a stock market of a stock exchange, a futures market of a futures exchange, an exempt stock market, an exempt futures market or such other market as approved under this Act or the rules of a stock exchange, a futures exchange or an approved clearing house, as the case may be; or
  - (c) anything done or omitted to be done under or in relation to a securities or futures contract entered into on a stock market of a stock exchange, a futures market of

a futures exchange, an exempt stock market, an exempt futures market or such other market as approved under this Act, as the case may be.

#### *Subdivision 4 – Registered facilities*

##### **Registered electronic facilities**

- 34.** (1) For the purposes of paragraphs 7(1)(d) and 7(2)(d), where the Commission is satisfied that it is appropriate to do so, may upon application by a person, register an electronic facility subject to such conditions as it considers appropriate.
- (2) The conditions imposed under subsection (1) may include requiring the person referred to in subsection (1) to–
- (a) make available the services according to such terms and conditions as may be approved by the Commission;
  - (b) ensure so far as is reasonably practicable that there is an orderly and fair market in relation to all transactions which are carried out by means of or through the electronic facility;
  - (c) permit any person authorised by the Commission to enter at any reasonable time the premises on which the facility is provided and to inspect the electronic facility by means of which the services are provided; and
  - (d) ensure adequate capacity, security arrangements and facilities to meet emergencies.
- (3) The Commission may from time to time add, vary, amend or revoke any condition imposed under subsection (1) or (2).
- (4) A person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding five years or to both.

##### **Application for registration**

- 35.** (1) An application under subsection 34(1) shall be accompanied by such information and particulars as the Commission may require.
- (2) Without limiting the generality of subsection (1), an application under subsection 34(1) shall also be accompanied by such information as may be required by the Commission regarding–
- (a) the services and facilities which the applicant will hold itself out as being able to provide if the application is allowed;
  - (b) the business which the applicant proposes to carry on and to which the application relates; and

- (c) its directors and substantial shareholders and, if any of its substantial shareholders is a corporation, the directors and substantial shareholders of that corporation.
- (3) In considering an application under subsection 34(1), the Commission may have regard to any information in its possession whether provided by the applicant or not.

### **Withdrawal of registration**

- 36.** (1) Subject to subsection (4), where the Commission is satisfied that it is appropriate to do so in the interest of the investors, in the public interest or for the maintenance of an orderly and fair market, it may, by notice in writing, withdraw the registration with effect from a date that is specified in the notice.
- (2) Such notice referred to in subsection (1) shall state the reasons in support of the ground for the withdrawal.
- (3) The Commission may by the notice in writing under subsection (1) permit the person to continue, on or after the date on which the withdrawal is to take effect, to carry on such activities affected by the withdrawal as the Commission may specify in the notice for the purpose of—
- (a) ceasing to provide the electronic facility to which the withdrawal relates; or
  - (b) protecting the interest of the investors or the public interest.
- (4) Where the Commission has granted a permission to a person under subsection (3), the person shall not, by reason of its carrying on the activities in accordance with the permission, be regarded as having contravened section 34.
- (5) The Commission shall not exercise its power under subsection (1) in relation to an electronic facility that has been registered under subsection 34(1) unless it has given the person referred to in subsection 34(1) a reasonable opportunity of being heard.
- (6) Any withdrawal of registration made under this section shall not operate so as to—
- (a) avoid or affect any agreement, transaction or arrangement entered into on the electronic facility whether the agreement, transaction or arrangement was entered into before or after the withdrawal of the registration under subsection (1); or
  - (b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

## *Subdivision 5 – Approval of clearing house*

### **Establishing or operating a clearing facility**

- 37.** (1) No person shall establish or operate a clearing facility unless the person has been approved to establish or operate a clearing facility under subsection 38(4).
- (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.
- (3) Subsection (1) shall not apply to any person providing, or holding out as providing, clearing facilities for an exempt stock market or an exempt futures market.

### **Power of Commission to approve clearing house**

- 38.** (1) An application for the approval to establish or operate a clearing house shall be in writing to the Commission and shall be accompanied by a copy of the rules of the proposed clearing house including a copy of its constitution and any information as may be required by the Commission.
- (2) The rules of the proposed clearing house must provide for–
- (a) the efficient provision of clearing house facilities in relation to securities and futures contracts that are cleared through its clearing facilities;
  - (b) the proper regulation and supervision of its participating organisations or affiliates that used its clearing facilities;
  - (c) the clearing house to enter into contracts with participating organisations or affiliates under which they would agree to be bound by the rules of the clearing house;
  - (d) the making of rules, including rules that make provision for a quick and fair method of settling disputes–
    - (i) between the clearing house and its participating organisations or affiliates; and
    - (ii) between those participating organisations or affiliates and their clients;
  - (e) the expulsion, suspension or disciplining of a participating organisation or affiliate for the failure to comply with the rules of the clearing house; and
  - (f) satisfactory provision for the class of securities or futures contracts that may be cleared on its facilities.
- (3) The proposed clearing house shall at all times have sufficient financial, human and other resources to ensure the provision of–

- (a) adequately and properly equipped premises for the conduct of its business;
  - (b) competent personnel for the conduct of its business; and
  - (c) automated systems with adequate capacity, security arrangements and facilities to meet emergencies.
- (4) Where the Commission is satisfied that it is appropriate to do so in the public interest, or for the proper regulation of a clearing house, it may, with the concurrence of the Minister by notice in writing, approve the person to establish or operate a clearing house subject to such conditions as the Commission thinks fit.
- (5) The clearing house shall provide clearing house facilities for a stock market of the relevant stock exchange or for a futures market of the relevant futures exchange, as the case may be.

### **Withdrawal of approval**

- 39.** (1) The Commission may, with the concurrence of the Minister, by notice in writing—
- (a) withdraw its approval granted under subsection 38(4) to an approved clearing house with effect from the date specified in the notice; or
  - (b) direct the approved clearing house to cease to provide or operate, or to cease to provide such services, as are specified in the notice, with effect from the date specified in the notice.
- (2) The Commission shall not withdraw its approval or issue a direction under subsection (1) unless the Commission is satisfied that it is appropriate to do so for the protection of investors or in the public interest or for the proper regulation of the clearing and settlement of transactions in securities or futures contracts, where any of the following circumstances occurs:
- (a) the approved clearing house ceases to provide clearing facilities;
  - (b) the approved clearing house is being wound up or otherwise dissolved, whether within or outside Malaysia;
  - (c) the approved clearing house has contravened section 9 or any term or condition of its approval or is charged with any offence under any securities laws;
  - (d) the approved clearing house has failed to comply with a condition, requirement or direction given under section 26, 354 or 355;
  - (e) any information provided for the purposes of section 38 was false or misleading in a material particular;
  - (f) a judgement debt against the approved clearing house has not been satisfied in whole or in part;

- (g) a receiver, a receiver and manager, or an equivalent person has been appointed, whether within or outside Malaysia, in relation to or in respect of any property of the approved clearing house;
  - (h) the approved clearing house has, whether within or outside Malaysia, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation; or
  - (i) the approved clearing house has on its own accord applied to the Commission to withdraw the approval granted to it and the Commission, with the concurrence of the Minister, thinks it fit to do so.
- (3) For the purposes of paragraph (2)(a), the approved clearing house shall be deemed to have ceased to provide clearing facilities if it has ceased to provide such facilities for a period of one month unless it has obtained the prior approval of the Commission to do so.
- (4) Notwithstanding the withdrawal of an approval or the issuance of a direction under subsection (1), the Commission may permit the person approved to provide clearing facilities to continue, on or after the date on which the withdrawal or direction is to take effect, to carry on such activities affected by the withdrawal or direction as the Commission may specify in the notice published under that subsection for the purpose of—
  - (a) closing down the operations of the approved clearing house or ceasing to provide the services specified in the notice; or
  - (b) protecting the investors or the public interest.
- (5) Where the Commission has granted permission to the person approved to provide clearing facilities under subsection (4), the person shall not, by reason of its carrying on the activities in accordance with the permission, be regarded as having contravened section 37.
- (6) The Commission shall not take any action under subsection (1) without giving a person an opportunity to be heard.

### **Effect of withdrawal of approval**

- 40.** Any withdrawal of approval or direction issued under section 39 shall not operate so as to—
- (a) avoid or affect any agreement, transaction or arrangement entered into through the approved clearing house whether the agreement, transaction or arrangement was entered into before or, where subsection 39(4) applies, after the withdrawal of the approval or issuance of the direction under section 39; or
  - (b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

*Subdivision 6 – Modifications to the law of insolvency and miscellaneous provisions relating to the operations and procedures of the approved clearing house*

**Interpretation**

**41.** (1) In this Subdivision, unless the context otherwise requires–

“charge” means any form of security, including a mortgage;

“default proceedings” means any proceedings or other action taken by an approved clearing house under its default rules;

“default rules”, in relation to an approved clearing house, means such rules of the approved clearing house which provide for the taking of default proceedings if a participant has failed, or appears to be unable, or likely to become unable, to meet its obligations in respect of all or any unsettled market contracts to which the participant is a party;

“defaulter” means a participant who is the subject of any default proceedings;

“exchange” means a stock exchange or a futures exchange, as the case may be;

“market charge” means a charge, whether fixed or floating, granted in favour of an approved clearing house over any property as specified in the rules of the approved clearing house;

“market collateral” means any property specified in the rules of an approved clearing house held by or deposited with an approved clearing house for the purpose of securing liabilities arising directly in connection with the approved clearing house ensuring the performance or settlement of one or more market contracts;

“market contract” means–

(a) a contract which is subject to the rules of an approved clearing house and entered into by the approved clearing house with a participant pursuant to a novation for the purpose of the clearing and settlement of transactions using the clearing facility of an approved clearing house; or

(b) a transaction which is or is to be cleared or settled using the clearing facility of an approved clearing house and in accordance with the rules of the approved clearing house, whether or not a novation referred to in paragraph (a) is to take place;

“relevant office-holder” means–

(a) the Director General of Insolvency appointed under section 70 of the Bankruptcy Act 1967 [Act 360];

(b) any person acting in relation to a company as its liquidator, provisional liquidator, receiver or manager;

- (c) any person acting in relation to an individual as his trustee in bankruptcy or interim receiver of his property;
  - (d) any person appointed pursuant to an order for the administration in bankruptcy of an insolvent estate of a deceased person; or
  - (e) a Special Administrator appointed under the Pengurusan Danaharta Nasional Berhad Act 1998 [Act 587].
- (2) Where—
- (a) a charge is granted partly for the purpose specified in the definition of “market charge” and partly for other purposes, the charge is a “market charge” insofar as it has effect for the specified purposes of securing liabilities arising directly in connection with the approved clearing house ensuring the performance or settlement of one or more market contracts; and
  - (b) collateral is provided partly for the purpose specified in the definition of “market collateral” and partly for other purposes, the collateral is a “market collateral” insofar as it has been provided for the specified purposes of securing liabilities arising directly in connection with the approved clearing house ensuring the performance or settlement of one or more market contracts.

## **Default rules**

- 42.** (1) An approved clearing house may have default rules which provide for the taking of default proceedings if a participant has failed, or appears to be unable, or likely to become unable, to meet its obligations in respect of all or any unsettled market contracts to which the participant is a party.
- (2) Where an approved clearing house takes any default proceedings, all subsequent proceedings or other action taken under its rules for the purposes of the settlement of market contracts of which the defaulter concerned is a party shall be treated as done under the default rules of the approved clearing house notwithstanding that, but for this subsection, such proceedings or other action would not be treated as done under the default rules of the approved clearing house.

## **Default proceedings of approved clearing house to take precedence over law of insolvency**

- 43.** (1) None of the following shall be regarded to any extent as invalid on the ground of inconsistency with the provisions relating to the distribution of the assets of a person under the laws of insolvency, or on the appointment of a relevant office-holder over any of the assets of a person:
- (a) a market contract;

- (b) the rules of an approved clearing house relating to the settlement of a market contract;
  - (c) any proceedings or other action taken under the rules of an approved clearing house relating to the settlement of a market contract;
  - (d) a market charge;
  - (e) the default rules of an approved clearing house; or
  - (f) any default proceedings.
- (2) Subject to subsection (3), the powers of a relevant office-holder in his capacity as such, and the powers of a court under the law of insolvency, shall not be exercised in such a way as to prevent or interfere with—
- (a) the settlement of a market contract in accordance with the rules of an approved clearing house; or
  - (b) any default proceedings.
- (3) Subsection (2) shall not operate to prevent a relevant office-holder from seeking to recover any amount referred to in subsection 49(1).

### **Supplementary provisions as to default proceedings**

- 44.** (1) A court may on an application by a relevant office-holder make such order as it thinks fit altering or dispensing from compliance with such of the functions of his office as are affected by the fact that default proceedings are pending or could be taken, or have been or could have been taken and, accordingly, such functions of the relevant office-holder shall be construed subject to such order.
- (2) Nothing in section 8, 10 or 18 of the Bankruptcy Act 1967 or section 176, 222, 224 or 226 of the Companies Act 1965, shall prevent or interfere with any default proceedings.

### **Duty to report on completion of default proceedings**

- 45.** (1) An approved clearing house shall, upon the completion of any default proceedings, make a report on such default proceedings stating in respect of each defaulter—
- (a) the net sum, if any, certified by the approved clearing house to be payable by or to the defaulter; or
  - (b) the fact that no sum is so payable,
- as the case may be, and the approved clearing house may include in that report such other particulars in respect of such default proceedings as it thinks fit.
- (2) An approved clearing house, which has made a report pursuant to subsection (1), shall supply the report to—

- (a) the Commission;
  - (b) any relevant office-holder acting for–
    - (i) the defaulter to whom the report relates; or
    - (ii) that defaulter’s estate;
  - (c) if there is no relevant office-holder referred to in paragraph (b), the defaulter to whom the report relates; and
  - (d) such other person as the Commission thinks fit.
- (3) Where an approved clearing house has made a report pursuant to subsection (1), it may publish notice of that fact in such a manner as it thinks appropriate to bring it to the attention of creditors of the defaulter to whom the report relates.
- (4) Where a relevant office-holder or defaulter, receives a report pursuant to subsection (2), he shall, at the request of a creditor of the defaulter to whom the report relates–
- (a) make the report available for inspection by the creditor; and
  - (b) on payment of such reasonable fee as the relevant office-holder or defaulter, as the case may be, determines, supply to the creditor all or any part of that report.
- (5) In subsections (2), (3) and (4), “report” includes a copy of a report.

### **Net sum payable on completion of default proceedings**

- 46.** (1) This section shall apply with respect to any net sum certified under subsection 45(1) by an approved clearing house, upon the completion by it of any default proceedings, to be payable by or to a defaulter.
- (2) Where a receiving or winding up order has been made, or a resolution for voluntary winding up has been passed, any net sum shall, notwithstanding any of the provisions of section 40 or 41 of the Bankruptcy Act 1967 or section 291 of the Companies Act 1965–
- (a) be provable in the bankruptcy of a defaulter or winding up or, payable to the relevant office-holder, as the case may be; and
  - (b) be taken into account, where appropriate, under section 41 of the Bankruptcy Act 1967 or that section as applied in the case of a winding up order under the Companies Act 1965.

## **Disclaimer of property, rescission of contracts, etc.**

- 47.** (1) Neither section 59 of the Bankruptcy Act 1967 nor subsection 296(1) of the Companies Act 1965 shall apply in relation to—
- (a) a market contract;
  - (b) a contract effected by an approved clearing house for the purposes of realising property provided as market collateral;
  - (c) a market charge; or
  - (d) any default proceedings.
- (2) Neither section 47 of the Bankruptcy Act 1967 nor section 223 of the Companies Act 1965 shall apply in relation to any act, matter or thing which has been done pursuant to—
- (a) a market contract;
  - (b) a disposition of property pursuant to a market contract;
  - (c) the provision of market collateral;
  - (d) a contract effected by an approved clearing house for the purpose of realising property provided as market collateral;
  - (e) a disposition of property in accordance with the rules of an approved clearing house as to the application of property provided as market collateral;
  - (f) a market charge;
  - (g) a disposition of property as a result of which the property becomes subject to a market charge, or any transaction pursuant to which that disposition is made;
  - (h) a disposition of property made in enforcing a market charge; or
  - (i) any default proceedings.

## **Adjustment to prior transactions**

- 48.** (1) No order shall be made pursuant to sections 53, 53A and 54 of the Bankruptcy Act 1967 or sections 293 and 304 of the Companies Act 1965, in relation to any matter under subsection (2).
- (2) The matters to which subsection (1) apply are—
- (a) a market contract;

- (b) a disposition of property pursuant to a market contract;
- (c) the provision of market collateral;
- (d) a contract effected by an approved clearing house for purposes of realising property provided as market collateral;
- (e) a disposition of property in accordance with the rules of an approved clearing house as to the application of property provided as market collateral;
- (f) a market charge; and
- (g) any default proceedings.

### **Right of relevant office-holder to recover certain amounts arising from certain transactions**

**49.** (1) If a participant (“the first participant”) sells securities at an overvalue to, or purchases securities at an undervalue from, another participant (“the second participant”) in circumstances as described in subsection (3), and thereafter a relevant office-holder acts for—

- (a) the second participant;
- (b) the principal of the second participant in the sale or purchase; or
- (c) the estate of the second participant or of the person referred to in paragraph (b),

then, unless a court otherwise orders, the relevant office-holder may recover, from the first participant, or the principal of the first participant, an amount equal to the identified gain obtained under the sale or purchase by the first participant, or the principal of the first participant.

(2) The amount equal to the identified gain is recoverable even if the sale or purchase may have been discharged according to the rules of an approved clearing house and replaced by a market contract.

(3) The circumstances referred to in subsection (1) for a sale or purchase shall be when—

- (a) an identified event has occurred in relation to the second participant or the principal of the second participant; and
- (b) either—
  - (i) the first participant knew, or ought reasonably to have known that an identified event was likely to occur in relation to the second participant or the principal of the second participant; or

- (ii) the principal of the first participant knew, or ought reasonably to have known that an identified event was likely to occur to the second participant or the principal of the second participant,

and the identified event occurs within the period of six months immediately after the date on which the sale or purchase was entered into.

(4) In this section–

(a) “identified event”, in relation to a second participant or a person who is or was, in respect of a sale or purchase referred to in subsection (1), the principal of the second participant, means–

- (i) an act of bankruptcy committed by the second participant or the principal of the second participant, as the case may be;
- (ii) the making of a statutory declaration in respect of the second participant or the principal of the second participant, as the case may be, pursuant to section 255 of the Companies Act 1965;
- (iii) a meeting of creditors summoned in relation to the second participant or the principal of the second participant, as the case may be, pursuant to section 260 of the Companies Act 1965; or
- (iv) the presentation of a petition for the winding up of the second participant or the principal of the second participant, as the case may be, by a court;

(b) “identified gain”, in relation to a sale or purchase referred to in subsection (1), means the difference between the market value of the securities which is the subject of the sale or purchase and the value of the consideration for the sale or purchase as at the time the sale or purchase was entered into.

## **Law of insolvency in other jurisdictions**

50. (1) A court shall not, pursuant to any enactment or rule of law, recognise or give effect to–

- (a) any order of a court exercising jurisdiction in relation to the law of insolvency in a place outside Malaysia; or
- (b) any act of a person appointed in such a place to perform any function under the law of insolvency in such place,

insofar as the making of the order or the doing of the act would be prohibited in the case of a court within Malaysia or a relevant office-holder by provisions made by or under this Act.

(2) In this section, “law of insolvency”, in relation to a place outside Malaysia, means any law of such place which is similar to, or serves the same purposes as, all or any part of the law of insolvency in Malaysia.

## **Participant to be a party to certain transactions as principal**

**51.** (1) Where—

- (a) a participant in his capacity as such enters into any transaction (including a market contract) with an approved clearing house; and
- (b) but for this subsection, the participant would be a party to that transaction as agent,

then, notwithstanding any provision under any law, as between, but only as between, the approved clearing house and any other person (including the participant and the person who is his principal in respect of that transaction), the participant shall for all purposes (including any civil action, claim or demand)—

- (A) be deemed not to be a party to that transaction as agent; and
- (B) be deemed to be a party to that transaction as principal.

(2) Where—

- (a) two or more participants in their capacities as such enter into any transaction; and
- (b) but for this subsection, any such participant would be a party to that transaction as agent,

then, notwithstanding any provision under any law, any such participant to whom paragraph (b) applies shall for all purposes (including any civil action, claim or demand), except as between, but only as between, him and the person who is his principal in respect of the transaction—

- (A) be deemed not to be a party to that transaction as agent; and
- (B) be deemed to be a party to that transaction as principal.

## **Securities or futures contracts delivered to an approved clearing house**

**52.** Where securities or futures contracts are delivered in settlement of a market contract or provided as market collateral or under a market charge—

- (a) to an approved clearing house;
- (b) by a participant; and
- (c) in accordance with the rules of the approved clearing house,

then, notwithstanding any provision under any law, no civil action, claim or demand, in respect of any right, title or interest in those securities or futures contracts held or enjoyed by any person lies, or shall be commenced or allowed, against the approved clearing house.

## Securities transfers in settlement

53. (1) Notwithstanding any other provision of law, including the Securities Industry (Central Depositories) Act 1991, in particular section 29A of that Act, a central depository shall give effect to an instruction from an approved clearing house to effect a transfer of securities into or out of a securities account of a depositor provided such instruction shall be for the purposes of settlement of a market contract or otherwise dealing with a market contract in accordance with the rules of the approved clearing house.
- (2) An instruction under subsection (1) shall be given by an approved clearing house only in relation to a securities account which relates to a depositor who is a party to a market contractor a depositor who had instructed a participant to effect a trade which results in a market contract to which the participant has become a party.
- (3) Notwithstanding any other provision of law, where any transfer of securities is effected by the central depository to or from a securities account of a depositor pursuant to subsection (1), no title in such securities shall pass to a depositor except as provided under the rules of the approved clearing house.
- (4) Where a transfer of securities has been effected into or out of a securities account of a depositor pursuant to subsection (1), a central depository shall not be subject to any action or claim by or be liable to any damages to that depositor.
- (5) In this section, the terms “depositor” and “securities account” shall have the same meaning as in the Securities Industry (Central Depositories) Act 1991.

## Purchase and sale of securities

54. (1) An approved clearing house may instruct a stock exchange to effect on behalf of the approved clearing house a sale or purchase of securities if such sale or purchase, as the case may be, is effected for the purposes of settlement of any market contract or to facilitate a default proceeding or to enable an approved clearing house to realise any asset comprised in any market charge or provided as market collateral, and the stock exchange shall give effect to any such instruction.
- (2) Where a sale or purchase of securities has been effected on behalf of the approved clearing house pursuant to subsection (1) by a stock exchange, the stock exchange shall not be subject to any action or claim by or be liable to any damages to any person.

## Immunity

55. (1) The functions to which this section applies are the functions of an approved clearing house so far as relating to or arising out of—
- (a) the default rules of the approved clearing house; or
- (b) any obligations to which it is subject by virtue of this Subdivision.

- (2) A failure by an approved clearing house to comply with its default rules in respect of any matter shall not prevent that matter from being treated for the purposes of this Act as done in accordance with those rules so long as the failure does not affect the rights of any person entitled to require compliance with those rules.
- (3) Where a relevant office-holder takes any action in respect of a defaulter which is liable to be dealt with in accordance with the default rules, and believes and has reasonable grounds for believing that he is entitled to take that action, he is not liable to any person in respect of any loss or damage resulting from his action except insofar as the loss or damage, as the case may be, is caused by the office-holder's own negligence.

### **Preservation of rights, etc.**

- 56.** Except as is expressly provided in this Act, the provisions of this Subdivision shall not operate to limit, restrict or otherwise affect—
- (a) any right, title, interest, privilege, obligation or liability of any person; or
  - (b) any investigation, legal proceedings or remedy in respect of any such right, title, interest, privilege, obligation or liability.

### **Exemption from regulations on reporting of substantial shareholding and Division 3A of the Companies Act 1965**

- 57.** The approved clearing house and central depository, in carrying out its functions under this Subdivision, shall be exempted from the requirements under the Securities Industry (Reporting of Substantial Shareholding) Regulations 1998 [*P.U. (A) 174/1998*] and Division 3A of the Companies Act 1965.