

**PART III**  
**CAPITAL MARKETS SERVICES**

**DIVISION 1**

**Licensing and Regulation**

**Requirement for Capital Markets Services Licence**

- 58.** (1) No person shall whether as a principal or agent, carry on a business in any regulated activity or hold himself out as carrying on such business unless he is the holder of a Capital Markets Services Licence or is a registered person.
- (2) Subsection (1) shall not apply to the persons or classes of persons as specified in Schedule 3.
- (3) Except for in respect of an insurance company licensed under the Insurance Act 1996 [Act 553] or a *takaful* operator registered under the Takaful Act 1984 [Act 312], the Commission may impose such terms and conditions as may be deemed appropriate on specified persons.
- (4) A person who contravenes subsection (1) 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.

**Requirement for Capital Markets Services Representative's Licence**

- 59.** (1) No person shall act as a representative in respect of any regulated activity or hold himself out as doing so unless he is the holder of a Capital Markets Services Representative's Licence for that regulated activity or is a registered person with respect to that regulated activity.
- (2) 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 grant or renewal of licence**

- 60.** (1) An application for the grant or renewal of a licence shall be—
- (a) made to the Commission in such form and manner as the Commission may specify; and
- (b) in the case of an application for renewal of a licence, made not later than thirty days or such other period as the Commission may specify, before the expiry of the licence.

- (2) The Commission may at any time after receiving an application for the grant of the licence, conduct such inquiry as it may deem necessary to satisfy itself that none of the grounds under subsection 64(1), 65(1) or in any regulation or guideline for the refusal to grant the licence applies, including financial, criminal and professional background checks of the applicant, directors, managers and the controller of the applicant, where relevant.
- (3) The Commission may require an applicant to furnish it with such information or documents as the Commission considers necessary in relation to the application.
- (4) An application for the grant or renewal of a licence shall be accompanied by a prescribed fee which shall be paid in such manner as may be specified by the Commission.
- (5) Where a person submits an application for renewal of his licence before the expiration of his licence but after the period referred to in subsection (1), the Commission may impose a late renewal fee as may be prescribed for every day or part thereof that the renewal is late.
- (6) In the case of an application for the grant or renewal of a Capital Markets Services Representative's Licence, such application shall be—
  - (a) supported by a holder of a Capital Markets Services Licence or a person who has applied for a Capital Markets Services Licence for that regulated activity, in such manner as may be specified by the Commission; and
  - (b) deemed to be withdrawn with effect from the date on which the holder of a Capital Markets Services Licence who supported the application—
    - (i) withdraws its support in writing;
    - (ii) withdraws its application for a Capital Markets Services Licence in respect of that regulated activity; or
    - (iii) has its application for a Capital Markets Services Licence in respect of that regulated activity refused by the Commission.
- (7) For the purposes of this section, sections 64, 66 and 72, the word "controller", in relation to a holder of a Capital Markets Services Licence, means a person who—
  - (a) is entitled to exercise, or control the exercise of, not less than fifteen per centum of the votes attached to the voting shares in the holder;
  - (b) has the power to appoint or cause to be appointed a majority of the directors of such holder; or
  - (c) has the power to make or cause to be made, decisions in respect of the business or administration of such holder, and to give effect to such decisions or cause them to be given effect to.

- (8) For the purposes of this section, sections 64, 66 and 72, “manager”, in relation to a body corporate, means a person who is appointed by the body corporate to manage any part of its business and includes an employee of the body corporate (other than the chief executive) who, under the immediate authority of a director or chief executive of the body corporate, exercises managerial functions or is responsible for maintaining accounts or other records of the body corporate.

### **Grant or renewal of licence**

- 61.** (1) Subject to subsections (2) and (3), the Commission may grant or renew a licence.
- (2) The grant or renewal of a Capital Markets Services Licence for the purposes of carrying on the business of dealing in securities or trading in futures contracts shall be with the concurrence of the Minister.
- (3) In granting or renewing a licence, the Commission may—
- (a) specify and describe the regulated activity to which the licence relates;
  - (b) specify the licence to be subject to such conditions or restrictions—
    - (i) in the case of a holder of a Capital Markets Services Licence who carries on the business of dealing in securities or trading in futures contracts, with the concurrence of the Minister; and
    - (ii) in any other case, as the Commission thinks fit; or
  - (c) in the case of a Capital Markets Services Representative’s Licence, relate the licence to the holder of a Capital Markets Services Licence which supported that application for the licence.
- (4) A person who contravenes any condition of, or restriction in, a licence commits an offence.

### **Power of Commission to impose conditions or restrictions on licences**

- 62.** (1) Without prejudice to section 61 and subject to subsection (2), the Commission may impose such other conditions or restrictions on a licence while the licence is in force.
- (2) In the case of a holder of a Capital Markets Services Licence who carries on the business of dealing in securities or trading in futures contracts, such other conditions or restrictions may only be imposed on the licence with the concurrence of the Minister.
- (3) Where the conditions or restrictions proposed to be imposed are likely to prejudice the interests of the licensed person, the Commission shall give such licensed person an opportunity to be heard.

## Licence fee

- 63.** (1) A licensed person shall pay such prescribed licence fee in respect of each regulated activity in such manner as may be specified by the Commission.
- (2) Any licence fee paid to the Commission under this Division shall be paid into and form part of the Federal Consolidated Fund.

## Grounds for refusal for the grant or renewal of Capital Markets Services Licence

- 64.** (1) Where an application is made for the grant or renewal of a Capital Markets Services Licence under section 60, the Commission may refuse the application on any of the following grounds:
- (a) the application was not made in accordance with section 60;
  - (b) the applicant has failed to comply with any other requirement of this Act or any guidelines made under this Act relating to the application;
  - (c) any information or document that is furnished by the applicant to the Commission is false or misleading;
  - (d) the applicant is in the course of being wound up or otherwise dissolved;
  - (e) execution against the applicant in respect of a judgment debt has been returned unsatisfied in whole or in part;
  - (f) a receiver, a receiver and manager or an equivalent person has been appointed within or outside Malaysia, or in respect of any property of the applicant;
  - (g) the applicant 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;
  - (h) the applicant or any of its directors, chief executive, managers or controller—
    - (i) has been convicted, whether within or outside Malaysia, of an offence involving fraud or other dishonesty or violence or the conviction of which involved a finding that it or he acted fraudulently or dishonestly;
    - (ii) has been convicted of an offence under the securities laws;
    - (iii) has contravened any provision made by or under any written law appearing to the Commission to be enacted for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of financial services or the management of companies;

- (iv) has engaged in any business practices appearing to the Commission to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on its or his method of conducting business;
  - (v) has engaged in or has been associated with any other business practices or otherwise conducted itself or himself in such a way as to cast doubt on its or his competence and soundness of judgment; or
  - (vi) is an undischarged bankrupt whether within or outside Malaysia;
- (i) the Commission has reason to believe that the applicant or any of its directors, chief executive, managers or controller may not be able to act in the best interest of its clients having regard to their reputation, character, financial integrity and reliability;
  - (j) the Commission is not satisfied as to the financial standing of the applicant or the manner in which the applicant's business is to be conducted;
  - (k) the Commission is not satisfied as to the record of past performance or expertise of the applicant having regard to the nature of the business which the applicant may carry on in connection with the holding of the licence;
  - (l) there are other circumstances which are likely to–
    - (i) lead to the improper conduct of business by the applicant or by any of its directors, chief executive, managers or controller; or
    - (ii) reflect discredit on the manner of conducting the business of the applicant or its controller;
  - (m) the Commission has reason to believe that the applicant or any of its directors, chief executive or managers will not carry on the regulated activity efficiently, honestly or fairly; or
  - (n) the Commission is of the opinion that it would be contrary to the interests of the public to grant or renew the licence.
- (2) Subject to subsection (3), the Commission shall not refuse an application for a renewal of a Capital Markets Services Licence without giving the applicant an opportunity to be heard.
- (3) The Commission may refuse an application for the renewal of a Capital Markets Services Licence on any of the following grounds without giving the applicant an opportunity to be heard:
- (a) the applicant is in the course of being wound up or otherwise dissolved, whether within or outside Malaysia;

- (b) a receiver, a receiver and manager or an equivalent person has been appointed, whether within or outside Malaysia in respect of any property of the applicant; or
- (c) the applicant or any of its directors, chief executive, managers or its controller has been convicted of any offence described in subparagraph 1(h)(i) or (ii).

## **Grounds for refusal for the grant or renewal of Capital Markets Services Representative's Licence**

- 65.** (1) Where an application is made for the grant or renewal of a Capital Markets Services Representative's Licence under section 60, the Commission may refuse the application on any of the following grounds:
- (a) the application was not made in accordance with section 60;
  - (b) the applicant has failed to comply with any other requirement of this Act or any guidelines made under this Act relating to the application;
  - (c) any information or document that is furnished by the applicant to the Commission is false or misleading;
  - (d) the applicant is an undischarged bankrupt whether within or outside Malaysia;
  - (e) execution against the applicant in respect of a judgment debt has been returned unsatisfied in whole or in part;
  - (f) the applicant 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;
  - (g) the applicant has—
    - (i) been convicted, whether within or outside Malaysia, of an offence involving fraud or other dishonesty or violence or the conviction of which involved a finding that he acted fraudulently or dishonestly;
    - (ii) been convicted of an offence under the securities laws;
    - (iii) contravened any provision made by or under any written law appearing to the Commission to be enacted for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of financial services or the management of companies or against financial loss due to the conduct of discharged or undischarged bankrupts;
    - (iv) engaged in any business practices appearing to the Commission to be deceitful or oppressive or otherwise improper (whether unlawful

- or not) or which otherwise reflect discredit on his method of conducting business; or
- (v) engaged in or has been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgment;
  - (h) the Commission is not satisfied as to the educational or other qualification or experience of the applicant having regard to the nature of the duties he is to perform in connection with the holding of the licence;
  - (i) the Commission has reason to believe that the applicant may not be able to act in the best interests of the clients of a holder of a Capital Markets Services Licence having regard to his reputation, character, financial integrity and reliability;
  - (j) the Commission is not satisfied as to the record of past performance or expertise of the applicant having regard to the nature of the duties which he may perform in connection with the holding of the licence;
  - (k) there are other circumstances which are likely to lead to the improper conduct of business by, or reflect discredit on the manner of conducting the business of, the applicant or any person employed by or associated with him for the purpose of his business;
  - (l) the Commission has reason to believe that the applicant will not carry on the regulated activity efficiently, honestly or fairly; or
  - (m) the Commission is of the opinion that it would be contrary to the interests of the public to grant or renew the licence.
- (2) Subject to subsection (3), the Commission shall not refuse an application for a renewal of a Capital Markets Services Representative's Licence without giving the applicant an opportunity to be heard.
- (3) The Commission may refuse an application for the renewal of a Capital Markets Services Representative's Licence on any of the following grounds without giving the applicant an opportunity to be heard:
- (a) the applicant is an undischarged bankrupt, whether within or outside Malaysia; or
  - (b) the applicant has been convicted of any offence described in subparagraphs (1)(g)(i) and (ii).

### **Power of Commission to enquire into transactions in respect of securities and futures contracts**

- 66.** (1) In deciding whether to grant or renew a licence, the Commission may enquire into any transaction involving the purchase or sale of securities or trade in futures

contracts, entered into or caused to be entered into by the applicant, its directors, chief executive, managers or controller, whether directly or indirectly, during any period of twelve months preceding the application for grant or renewal of the licence, as the case may be, referred to in this section as the “relevant period”, to ascertain if that person has in such transaction used dishonest, unfair or unethical devices or trading practices, whether such devices or trading practices constitute an offence under this Act or otherwise.

- (2) For the purposes of subsection (1), the Commission may in such form and within such time as it may specify by notice in writing, require an applicant for a licence or the renewal of the licence to submit detailed information of any transaction involving the purchase or sale of securities or trade in futures contracts during the relevant period, irrespective of whether the relevant period falls before or after the date of the coming into operation of this Act.
- (3) In addition to any other penalty that may be imposed under this Act, a person who fails or refuses to submit information to the Commission within the time specified in the notice referred to in subsection (2) or who gives false or misleading information—
  - (a) in the case of an application for the grant of a licence, is liable to have his application rejected; or
  - (b) in the case of an application for the renewal of a licence, is liable to have his licence revoked under section 72.

### **Minimum financial requirements**

- 67.** No holder of a Capital Markets Services Licence shall carry on any regulated activity in respect of its licence without the written consent of the Commission if it does not meet the minimum financial requirements as may be specified by the Commission or as may be provided in the rules of a stock exchange or a futures exchange.

### **Period of licence**

- 68.** (1) A licence that has been issued in accordance with the provisions in this Division shall expire twelve months after the date it is issued or on such later date as may be specified by the Commission in writing.
- (2) A licence that has been renewed in accordance with the provisions of this Division shall continue in force for a further period of twelve months or such later date as may be specified by the Commission, commencing on the date upon which but for its renewal it would have expired.

### **Variation of licence**

- 69.** (1) The Commission may, on the application of—
- (a) a holder of a Capital Markets Services Licence, vary its licence by adding or removing a regulated activity to or from those already specified in the licence; or

- (b) a holder of a Capital Markets Services Representative's Licence, vary the name of his principal, on whose behalf he may act and the regulated activity to which the licence relates.
- (2) The Commission may require an applicant to supply the Commission with such information or documents as it considers necessary in relation to the application.
- (3) An application under subsection (1) shall be accompanied by a prescribed application fee which shall be paid in such manner as may be specified by the Commission.
- (4) The Commission may—
  - (a) approve the application subject to such conditions or restrictions as it thinks fit; or
  - (b) refuse the application on any of the grounds set out in subsection 64(1) or 65(1).
- (5) The Commission shall not refuse an application under subsection (1) without giving the applicant an opportunity to be heard.

### **Deposit to be lodged in respect of Capital Markets Services Licence**

- 70.** (1) A Capital Markets Services Licence to carry on the business of dealing in securities or fund management shall not be granted or renewed unless the applicant for the licence has—
- (a) lodged with the Commission at the time of the application for the granting or renewal of such licence, a deposit in the sum of one hundred and fifty thousand ringgit or such other sum as the Minister may prescribe in regulations made under subsection (4); or
  - (b) entered into an insurance contract for the indemnification of claims made against the applicant up to an amount of one hundred and fifty thousand ringgit or such other sum as the Minister may prescribe.
- (2) Subsection (1) shall not apply to a holder of a Capital Markets Services Licence who carries on the business of dealing in securities and who is a participating organisation.
  - (3) A deposit required by subsection (1) shall be in cash or in such other form as the Commission may allow.
  - (4) A deposit lodged under subsection (1) shall be applied by the Commission in accordance with the regulations made under this Act.
  - (5) For the purposes of this section, the Minister may prescribe in the regulations different amounts of deposit or extent of insurance coverage for different holders or classes of holders of a Capital Markets Services Licence who carry on the business of dealing in securities or fund management.

## **False statements in relation to application for grant, renewal or variation of licence**

- 71.** A person who, in connection with an application for the grant, renewal or variation of a licence, makes a statement that is false or misleading in a material particular knowing it to be false or misleading or wilfully omits to state any matter or thing without which the application is misleading in a material respect 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 five years or to both.

## **Revocation and suspension of licence**

- 72.** (1) A licence shall be deemed to be revoked–
- (a) in the case of a holder of a Capital Markets Services Licence, if the holder is wound up or otherwise dissolved, whether within or outside Malaysia; and
  - (b) in the case of a holder of a Capital Markets Services Representative’s Licence, if the representative dies.
- (2) The Commission may revoke a licence–
- (a) in the case of a holder of a Capital Markets Services Licence, if–
    - (i) there exists a ground on which the Commission may refuse an application under subsection 64(1);
    - (ii) the holder fails or ceases to carry on the business in all or any of the regulated activities for which it was licensed for a consecutive period of three months;
    - (iii) the holder contravenes any condition or restriction in respect of its licence or any direction issued to it by the Commission under this Act; or
    - (iv) the holder contravenes any of the rules of the stock exchange, futures exchange, approved clearing house or central depository which is binding upon it:

Provided that in the case of a holder of a Capital Markets Services Licence who carries on the business of dealing in securities or trading in futures contracts, the licence may only be revoked with the concurrence of the Minister; or
  - (b) in the case of a holder of a Capital Markets Services Representative’s Licence, if–
    - (i) there exists a ground on which the Commission may refuse an application under subsection 65(1);

- (ii) he fails or ceases to act as a representative in respect of all or any of the regulated activities for which he was licensed;
  - (iii) the licence of his principal is revoked; or
  - (iv) the holder contravenes any condition or restriction in respect of his licence or any direction issued to him by the Commission under this Act.
- (3) Where subsection (2) applies, the Commission may, if it considers it desirable to do so–
- (a) suspend a licence for a specific period instead of revoking it under subsection (2); and
  - (b) at any time extend or revoke the suspension:

Provided that in the case of a holder of a Capital Markets Services Licence who carries on the business of dealing in securities or trading in futures contracts, the licence may only be suspended with the concurrence of the Minister.

- (4) Subject to subsection (5), the Commission shall not revoke or suspend a licence under subsection (2) or (3) without giving the licensed person an opportunity to be heard.
- (5) The Commission may revoke or suspend a licence without giving the licensed person an opportunity to be heard–
- (a) in the case of a holder of a Capital Markets Services Licence, on any of the following grounds:
    - (i) the holder is in the course of being wound up or otherwise dissolved, whether within or outside Malaysia;
    - (ii) a receiver, a receiver and manager or an equivalent person has been appointed, whether within or outside Malaysia in respect of any property of the holder; or
    - (iii) the holder or any of its directors, chief executive, managers or controller has been convicted of any offence described in subparagraph 64(1)(h)(i) or (ii); or
  - (b) in the case of a holder of a Capital Markets Services Representative's Licence, on any of the following grounds:
    - (i) the holder is an undischarged bankrupt, whether within or outside Malaysia; or
    - (ii) the holder has been convicted of any offence described in subparagraph 65(1)(g)(i) or (ii).

- (6) Without prejudice to subsections (2) and (3), the Commission may, on any ground described in subsection (2), impose any restriction on the activities of a licensed person to which its licence relates and such restriction may be permanent or be made for such period as may be determined by the Commission.
- (7) The Commission shall not impose any restriction under subsection (6) without giving the licensed person an opportunity to be heard.
- (8) Where the Commission has revoked or suspended a Capital Markets Services Licence or imposed restrictions on a holder of a Capital Markets Services Licence, such holder shall immediately inform all its representatives by notice in writing of such revocation, suspension or imposition of a restriction.
- (9) A person whose licence is revoked or suspended under this section shall, for the purposes of this Division, be deemed not to be licensed from the date that the revocation or suspension takes effect, as the case may be.
- (10) A person who—
  - (a) carries on a regulated activity after its licence has been revoked;
  - (b) carries on a regulated activity while its licence has been suspended or is in breach of a restriction imposed under subsection (6); or
  - (c) contravenes 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 ten years or to both, and in the case of a continuing offence, to a further fine not exceeding five thousand ringgit for every day or part thereof during which the offence continues after conviction.

### **Effect of revocation, suspension or expiry of licence, etc.**

- 73.** (1) A revocation, suspension or expiry of a licence or the imposition of a restriction on a licence shall not operate so as to—
- (a) avoid or affect any agreement, transaction or arrangement relating to the regulated activities entered into by such person, whether the agreement, transaction or arrangement was entered into before or after the revocation, suspension or expiry of the licence or the imposition of restriction on the licence, as the case may be; or
  - (b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.
- (2) Where any licence is revoked or suspended or has expired under this Division, the Commission may by notice in writing permit the holder of a Capital Markets Services Licence to—

- (a) in the case of a revocation, carry on business operations for the purpose of closing down the business connected with the revocation;
- (b) in the case of a suspension, carry on only essential business operations for the protection of interests of clients of the licensed person during the period of suspension; or
- (c) in the case of an expiry, carry on such business activity as the Commission may approve for the protection of the interest of clients of the person who held the Capital Markets Services Licence before such expiry,

subject to such conditions as the Commission may specify in the notice.

### **Notification of disqualifying event**

**74.** (1) A licensed person shall, immediately after the happening of an event that is a ground on which the Commission may revoke licence under—

- (a) subsection 64(1) or 65(1);
- (b) subparagraph 72(2)(a)(i), (ii), (iii) or (iv); or
- (c) subparagraph 72(2)(b)(i), (ii), (iii) or (iv),

give to the Commission written notice setting out the particulars of the event.

(2) Subject to subsection (1), it shall be a defence for a licensed person who is required to give notice under subsection (1) if it is proved that when the requirement arose the licensed person was unaware of the event that gave rise to the requirement.

(3) A person who contravenes subsection (1) commits an offence.

### **Appointment, election and nomination of directors and chief executive of licensed person, etc.**

**75.** (1) A person may be appointed, elected or nominated as a director of a holder of a Capital Markets Services Licence only if the person is a fit and proper person where none of the grounds set out in paragraph 65(1)(d), (e), (f), (g), (i), (j) or (k) would prevent him from holding such office.

(2) A person may be appointed as a chief executive of a holder of a Capital Markets Services Licence only if the person is a fit and proper person where none of the grounds set out in paragraph 65(1)(d), (e), (f), (g), (i), (j) or (k) would prevent him from holding such office.

(3) A holder of a Capital Markets Services Licence shall give the Commission written notice in such form and manner as may be specified by the Commission of the appointment, election or nomination to the office of the director or chief executive.

- (4) A director or chief executive whose name has been notified to the Commission under subsection (3) and who subsequently becomes aware that he does not meet the fit and proper criteria referred to under subsection (1) shall immediately inform the Commission.
- (5) Where a holder of a Capital Markets Services Licence becomes aware that any of its directors or chief executive does not meet the fit and proper criteria referred to under subsection (1), such holder shall immediately upon becoming aware of such disqualification, inform the Commission.
- (6) A person shall be disqualified from holding the office of a director or chief executive of a holder of a Capital Markets Services Licence, as the case may be, if any of the grounds set out in paragraph 65(1)(d), (e), (f), (g), (i), (j) or (k) is applicable.
- (7) A holder of a Capital Markets Services Licence shall ensure that no person holds office as a director or chief executive, as the case may be, if subsection (6) applies.
- (8) Where a holder of a Capital Markets Services Licence contravenes the requirement of subsection (7), the Commission may direct such holder to remove the director or chief executive, as the case may be, within such period as may be specified in such direction.
- (9) Notwithstanding the provision of any other written law, the holder of a Capital Markets Services Licence shall within the period specified in the direction given under subsection (8), remove such director or chief executive, as the case may be, and shall take such steps as may be necessary to inform the shareholders of such holder and the Registrar of Companies, where applicable, of such removal.
- (10) The removal of a director or chief executive, as the case may be, in accordance with the direction given under subsection (8) shall take effect from the date of the receipt by the director or chief executive, as the case may be, of the notification of removal given by the holder of a Capital Markets Services Licence, notwithstanding the provisions of any other written law or the memorandum of association or articles of association of such holder or any agreement between the holder and such director or chief executive.
- (11) A person who contravenes this section or a direction issued under subsection (8) commits an offence.

## **Registered persons**

- 76.** (1) A person is a registered person for the purposes of subsection 58(1) where such person is—
- (a) specified to be a registered person in Schedule 4;
  - (b) registered under subsection (2);
  - (c) registered with a recognised self-regulatory organisation under section 323;  
or

- (d) registered with a body that is approved by the Commission.
- (2) The Commission may on the application made by any person referred to in paragraph (1)(b) register such person for one or more regulated activities.
  - (3) Any registration under Part 2 of Schedule 4, paragraphs (1)(b), (c) and (d) shall be subject to such terms and conditions as the Commission may impose, and the Commission may at any time, by notice in writing served on the registered person concerned, amend or revoke any such condition or impose new conditions.
  - (4) Where the Commission by notice in writing amends or revokes any term or condition or imposes any new condition under subsection (3), the amendment, revocation or imposition shall take effect at the time of the service of the notice or at such time specified in the notice, whichever is the later.
  - (5) In respect of registered persons referred to in paragraph (1)(a) as specified in the third column of Part 1 of Schedule 4, the registered person shall comply with any guideline issued by the Commission under section 377 in respect of the carrying on of the particular regulated activity by the registered person.
  - (6) In respect of persons referred to in paragraph (1)(a), the following shall apply:
    - (a) registered persons specified in the third column of Part 1 of Schedule 4 may only carry on the regulated activities specified in the second column of Part 1 of Schedule 4;
    - (b) registered persons specified in the third column of Part 2 of Schedule 4 may only carry on the regulated activities specified in the second column of Part 2 of Schedule 4;
    - (c) to the extent that such registered persons carry on the regulated activities specified in the second column of Part 1 of Schedule 4—
      - (i) the provisions under sections 91, 92, 93 and 97 and any regulation or guideline made pursuant to these sections shall apply to such registered persons with the necessary modifications as may be applicable;
      - (ii) the individuals employed by such registered persons to carry on the regulated activities shall be fit and proper persons as may be determined by the relevant authority;
      - (iii) the registered person shall maintain a register containing the names of the individuals referred to in subparagraph (ii) in such form and manner as may be specified by the relevant authority; and
      - (iv) subject to subsection (5), the relevant authority may authorise in writing any person as an authorised person for the purposes of ensuring compliance by a registered person who is specified in Part 1 of Schedule 4 with the provisions of sections 91, 92, 93 and 97 and any regulation or guideline made pursuant to aforementioned sections.

- (7) For the purposes of subsection (6), an authorised person may–
  - (a) require a registered person to furnish him with any information that the authorised person may require to determine whether the registered person has complied with the provisions referred to in subparagraph (6)(c)(i); or
  - (b) require the registered person to take such steps as are necessary to ensure compliance with the provisions referred to in subparagraph (6)(c)(i).
- (8) A registered person referred to in paragraph (6)(a) shall comply with any requirement made under subsection (7).
- (9) The Commission may withdraw the registration accorded to any person registered under subsection (2) or any registered person referred to in Part 2 of Schedule 4 if it is necessary for the protection of investors or public interest or for the maintenance of an orderly market or if any term and condition imposed under subsection (3) has not been complied with.
- (10) The Commission shall not withdraw the registration under subsection (9) without giving the registered person an opportunity to be heard.
- (11) For the purposes of this section, the term "relevant authority" refers to Bank Negara.

### **Register of licence holders**

- 77.** (1) The Commission shall keep in such form as it thinks fit a register of the holders of current licences, specifying–
- (a) in relation to each holder of a Capital Markets Services Licence–
    - (i) its name;
    - (ii) where the holder is a corporation, the names of the directors and the secretary of the corporation;
    - (iii) the address of the principal place of business and any branch at which it carries on the business; and
    - (iv) where the business is carried on under a name or style other than the name of the holder of the licence, the name or style under which the business is carried on; and
  - (b) in relation to a holder of a Capital Markets Services Representative's Licence–
    - (i) his name;
    - (ii) the name of the holder of the Capital Markets Services Licence in relation to whom the Capital Markets Services Representative's Licence was issued; and

- (iii) where the business of that holder of the Capital Markets Services Licence is carried on under a name or style other than the name of the holder of the Capital Markets Services Licence, the name or style under which that business is carried on; and
- (c) such other information as the Commission thinks relevant.
- (2) The Commission shall remove from the register every entry relating to any person who ceases to be licensed under this Division.
- (3) A person may, upon payment of the prescribed fee, inspect and take extracts from the register kept under subsection (1).

### **Notification of change of particulars**

**78.** (1) Where—

- (a) the holder of a Capital Markets Services Licence ceases to carry on the business to which the licence relates;
- (b) the holder of a Capital Markets Services Representative's Licence ceases to be a representative of the Capital Markets Services Licence holder in relation to whom the Capital Markets Services Representative's Licence was issued, and the licence has not been varied under section 69;
- (c) a change occurs in any information required to be entered in the register of licence holders under section 77; or
- (d) a change occurs in the information submitted to the Commission in accordance with subsection 60(1) or (3),

the holder of the licence shall, not later than fourteen days after the occurrence of the event concerned, give to the Commission, in the specified form, particulars in writing of the event concerned.

- (2) Where a licensed person ceases to carry on the business in all or any of the regulated activities to which the licence relates, it shall return the licence to the Commission within fourteen days of the date of the cessation.

### **Publication of names and addresses**

- 79.** (1) The Commission shall cause to be published in such form and manner as the Commission thinks fit, a list of the names and addresses of all holders of a Capital Markets Services Licence.
- (2) The information required to be published under subsection (1) shall be published at least once in each year.
- (3) If the Commission at any time amends any register kept by it under section 77 by adding or removing the name of a holder of a Capital Markets Services Licence, the Commission shall cause particulars of the amendments to be published.

## Appeals

- 80.** (1) Where the Commission—
- (a) refuses to grant or renew a licence under subsection 64(1) or 65(1);
  - (b) refuses to vary a licence under paragraph 69(4)(b); or
  - (c) revokes or suspends a licence under section 72,
- the person who is aggrieved by the decision of the Commission may within fourteen days after the person has been notified of the decision of the Commission, appeal to the Minister whose decision shall be final.
- (2) Subsection (1) shall not apply to the holder of a Capital Markets Services Licence who carries on the business of dealing in securities or trading in futures contracts.
  - (3) Where an appeal is to be made to the Minister under subsection (1), the decision of the Commission under section 64, 65, 69 or 72, as the case may be, shall not take effect until the appeal is disposed of by the Minister.
  - (4) On an appeal against the decision of the Commission under subsection (1), the Minister may—
    - (a) affirm the decision of the Commission;
    - (b) set aside the decision of the Commission; or
    - (c) set aside the decision of the Commission and make a decision in substitution for that decision.

## Surrender of licence

- 81.** (1) Subject to subsection (2), a licensed person may surrender the licence by sending it to the Commission together with a written notice of its surrender.
- (2) The surrender of a licence shall not take effect until the Commission is satisfied that adequate arrangements have been made to meet all the liabilities and obligations of the licensed person that are outstanding at the time when the notice of surrender was given by the licensed person.
  - (3) A surrender of a licence made under subsection (1) shall not operate so as to—
    - (a) avoid or affect any agreement, transaction or arrangement relating to the regulated activities entered into by such person, whether the agreement, transaction or arrangement was entered into before or after the surrender of the licence; or
    - (b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

- (4) The Commission shall cause to be published as soon as may be practicable a notice of every surrender of a licence under subsection (1), but any delay in publishing such notice or failure to publish it shall not affect the validity of the surrender.

## **DIVISION 2**

### **Records**

#### **Application of this Division**

- 82.** (1) This Division applies to a person who is—
- (a) a licensed person who carries on the business of dealing in securities;
  - (b) a licensed person who carries on the business of fund management;
  - (c) a licensed person who carries on the business of advising on corporate finance;
  - (d) a licensed person who carries on the business of investment advice;
  - (e) a licensed person who carries on the business of financial planning;
  - (f) a financial journalist; or
  - (g) an authorised depository agent appointed under section 13 of the Securities Industry (Central Depositories) Act 1991.
- (2) In this Division, “financial journalist” means a person who is not a licensed person and, in the course of the person’s business or employment contributes advice, or prepares analyses or reports, about securities for publication—
- (a) in a newspaper or periodical;
  - (b) in the course of or by means of transmissions made by means of an information service; or
  - (c) in sound recordings, video recordings or data recordings.
- (3) In this Division, a reference to securities is a reference to the securities of a corporation or to the securities which are quoted or dealt in on a stock exchange in Malaysia, as the case may require.

#### **Register of securities**

- 83.** (1) Any person referred to in subsection 82(1) shall maintain a register in the specified form of the securities in which he has an interest.

- (2) The register required to be kept under this Division shall be kept at such place within Malaysia as may be nominated by the person referred to in subsection (1) for the purposes of this Division provided that such person shall notify the Commission in writing after beginning to keep the register.
- (3) A person referred to in subsection 82(1) shall enter in the register, particulars of the securities in which he has interest and particulars of his interest in those securities within seven days after the date of the acquisition.
- (4) Where there is a change, not being a prescribed change, in the interest in securities of a person referred to in subsection 82(1), he shall—
  - (a) enter in the register full particulars of the change including the date of the change and the circumstances by reason of which that change has occurred; and
  - (b) the entry shall be made within seven days after the date of the change.
- (5) For the purposes of subsection (4), where a person acquires or disposes of securities, there shall be deemed to be a change in the interest of that person.

### **Notice of particulars to Commission**

- 84.** (1) Any person referred to in subsection 82(1) shall give notice to the Commission in such form as may be specified containing such information as may be specified including the place at which he will keep the register of his interest in securities.
- (2) The notice shall be given—
- (a) in the case of a person who is required by this Act to hold a licence, as part of his application for the licence; or
  - (b) in the case of any other person, if the person becomes a person referred to in subsection 82(1), within fourteen days from the date of his becoming such a person.
- (3) The notice shall be so given notwithstanding that the person has ceased to be a person referred to in subsection 82(1), before the expiration of the period referred to in subsection (2).
- (4) A person who ceases to be a person referred to in subsection 82(1) shall give notice to the Commission of his so ceasing in the specified form within fourteen days of his so ceasing.
- (5) A person who fails to give notice as required by this section commits an offence.

### **Defence to a prosecution**

- 85.** (1) It is a defence to a prosecution for contravening or failing to comply with section 83 or 84, if the defendant proves that his failure was due to his not being aware

of a fact or occurrence, the existence of which was necessary to constitute the offence, and that—

- (a) he was not so aware on the date of the summons;
  - (b) he became so aware less than fourteen days before the date of the summons; or
  - (c) he became so aware not less than fourteen days before the date of the summons and complied with the relevant section within such time as may be prescribed after becoming so aware.
- (2) For the purposes of subsection (1), a person shall conclusively be presumed to have been aware of a fact or occurrence at a particular time of which an employee or agent of the person being an employee or agent having duties or acting in relation to his employer's or principal's interest in the securities concerned, was aware at that time.

### **Production of register**

- 86.** (1) The Commission may require any person referred to in subsection 82(1) to produce for inspection the register required to be kept pursuant to section 83 and the Commission may make a copy of or make extracts from the register.
- (2) A person who fails to produce a register for inspection or fails to allow the Commission to make a copy of or make extracts from the register commits an offence.

### **Particulars of financial journalists**

- 87.** (1) The Commission may by notice in writing require the proprietor, publisher or producer of a newspaper, periodical, information service or sound, video or data recording to supply the Commission with the name and address of the financial journalist who has contributed any advice or prepared any analysis or report that has been published or broadcasted in a newspaper, periodical, information service or sound, video or data recording owned, published or broadcasted by that proprietor, publisher or producer or with the names and addresses of all the financial journalists who have contributed any such advice or prepared any such analysis or report within a period as may be specified in the notice.
- (2) A proprietor, publisher or producer of a newspaper, periodical, information service or sound, video or data recording who contravenes a notice under subsection (1) commits an offence.

### **Commission may supply copy of the extract of a register**

- 88.** The Commission may, upon receipt of the prescribed fee, supply to any person a copy of the extract of a register obtained pursuant to section 86.

## **DIVISION 3**

### **Conduct of Business**

#### *Subdivision 1 – General*

#### **Certain representation prohibited**

- 89.** (1) A licensed person shall not represent or imply, or knowingly permit to be represented or implied in any manner to another person that the abilities or qualifications of such licensed person have in any respect been approved by the Commission.
- (2) A mere representation that a person is the holder of a Capital Markets Services Licence is not a contravention of this section.

#### **Issue of contract notes**

- 90.** (1) The Minister may make regulations under subsection 378(3) with respect to the issuance of contract notes to clients of a holder of a Capital Markets Services Licence.
- (2) A holder of a Capital Markets Services Licence referred to in subsection (1) shall comply with the requirements of the regulations made by the Minister in relation to contract notes.
- (3) A holder of a Capital Markets Services Licence who contravenes any requirement of the regulations in relation to contract notes commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding five years or to both.

#### **Disclosure of certain interests in securities**

- 91.** (1) Where a licensed person sends circulars or other similar written communications in which he made a recommendation, whether expressly or by implication, with respect to any securities, or class of securities, the licensed person shall cause to be included in each circular or other communication, in type not less legible than that used in the remainder of the circular or other communication, a concise statement of the nature of any relevant interest in, or any interest in the acquisition or disposal of, those securities or securities included in that class that the licensed person or a person associated with him has at the date on which the licensed person last sends the circular or other communication.
- (2) It is a defence to a prosecution for an offence against subsection (1) in relation to a failure to include in a circular or other communication a statement of the nature of a relevant interest in, or an interest in the acquisition or disposal of, securities or securities included in a class of securities, being a relevant interest or an interest of the defendant or of a person associated with the defendant, if the defendant establishes that, at the time at which the circular or other communication was sent, he was not aware and could not reasonably be expected to have been aware that–

- (a) he had a relevant interest in, or an interest in the acquisition or disposal of, those securities or securities included in that class; or
- (b) the person associated with him had a relevant interest in, or an interest in the acquisition or disposal of, those securities or securities included in that class,

as the case may be.

(3) For the purposes of subsections (1) and (2)–

- (a) an interest of a person in the disposal of securities includes any financial benefit or advantage that will, or is likely to, accrue directly or indirectly to the person upon or arising out of the disposal of the securities;
- (b) without limiting the generality of the foregoing, a person who has entered into an underwriting agreement in respect of securities shall be deemed to have an interest in the acquisition or disposal of those securities; and
- (c) notwithstanding the provisions of section 3, a person is not associated with another person in relation to the sending of a circular or other communication or the making of a recommendation by reason only that he is a director of a body corporate of which the other person is also a director, whether or not the body corporate carries on a business of dealing in securities, unless the person and the other person are acting jointly, or otherwise acting together or under or in accordance with an arrangement made between them, in relation to the sending of the circular or communication or the making of the recommendation.

(4) Where–

- (a) a person has subscribed for or purchased securities for the purpose of offering all or any of them for purchase; and
- (b) the person offers any of those securities for purchase,

the person shall not make a recommendation, whether orally or in writing and whether expressly or by implication, with respect to the securities offered for purchase unless he has informed each person to whom the recommendation is made that he acquired the securities for that purpose.

(5) Where–

- (a) securities have been offered for subscription or purchase; and
- (b) a person has subscribed for or purchased or is or will or may be required to subscribe for or purchase, any of those securities under an underwriting agreement by reason that some or all of the securities have not been subscribed for or purchased,

the person shall not, during the period of ninety days after the close of the offer, make an offer to sell those securities, otherwise than in the ordinary course of trading on a stock market, or make a recommendation with respect to those securities unless the offer or recommendation contains or is accompanied by a statement to the effect that the offer or recommendation relates to securities that he has acquired, or is or will or may be required to acquire, under an underwriting agreement by reason that some or all of the securities have not been subscribed for or purchased.

- (6) For the purposes of subsection (5), "underwriting" includes subunderwriting.
- (7) A licensed person shall not send to a person a circular or other communication or written offer or recommendation to which subsection (1), (4) or (5) applies unless the circular or other communication or the offer or recommendation—
  - (a) where the licensed person is a natural person, is signed by the licensed person;
  - (b) where the licensed person is a natural person who carries on business in partnership, is signed by a partner in the partnership in his own name or in the name of the partnership;
  - (c) where the licensed person is a natural person who carries on business in a corporation, is signed by a director, an executive officer or the secretary of the corporation; or
  - (d) where the licensed person is a corporation, is signed by a director, an executive officer or the secretary of the corporation.
- (8) Where a licensed person sends to a person a circular or other communication or a written offer or recommendation to which subsection (1), (4) or (5) applies, the licensed person shall preserve a copy of the circular or other communication, or of a written offer or recommendation, duly signed by the person concerned, for a period of seven years.
- (9) A reference in this section to an offer of securities shall be construed as including a reference to a statement, however expressed, that is not an offer but expressly or impliedly invites a person to whom it is made to offer to acquire securities.
- (10) For the purposes of this section, a circular or other communication or a written offer or recommendation sent to a person shall—
  - (a) where it is signed by a person in partnership, be deemed to have been sent by each of the partners in the partnership; or
  - (b) where it is signed by a director, an executive officer or the secretary of a corporation, be deemed to have been sent by the corporation.
- (11) The Commission may, with the approval of the Minister if it is not detrimental to the interest of investors, exempt in writing any securities or persons or class of securities or persons from this section.

- (12) A person who contravenes this section 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.

### **Recommendations by licensed person**

92. (1) A licensed person shall not make a recommendation with respect to any securities or futures contracts to a person who may reasonably be expected to rely on the recommendation without having a reasonable basis for making the recommendation to the person.
- (2) For the purposes of subsection (1), a licensed person does not have a reasonable basis for making a recommendation to a person unless—
- (a) the licensed person has, for the purposes of ascertaining that the recommendation is appropriate, taken all practicable measures to ascertain that the information possessed and relied upon by the licensed person concerning the investment objectives, financial situation and particular needs of the person is accurate and complete;
  - (b) the licensed person has given such consideration to, and conducted such investigation of, the subject matter of the recommendation as may be reasonable in all the circumstances; and
  - (c) the recommendation is based on such consideration and investigation.
- (3) A licensed person who contravenes subsection (1) does not commit an offence.
- (4) Where the licensed person contravenes subsection (1) or section 91 by making a recommendation to a person and—
- (a) the person, in reliance on the recommendation, does a particular act or refrains from doing a particular act;
  - (b) it is reasonable, having regard to the recommendation and all other relevant circumstances, for the person to do that act or to refrain from doing that act, as the case may be, in reliance on the recommendation; and
  - (c) the person suffers loss or damage as a result of doing that act or refraining from doing that act,
- the licensed person shall be liable to pay damages to the person in respect of that loss or damage.
- (5) A licensed person shall not be liable under subsection (4) if it is proved that a reasonable person in the circumstances could be expected to have done or omitted to do, as the case may be, that act in reliance on the recommendation even if a licensed person had complied with that section in relation to the recommendation.

- (6) In the case of a contravention of subsection (1), a licensed person shall not be liable if it is proved that the recommendation was, in all circumstances, appropriate having regard to the information that, when making the recommendation, the licensed person had about the client's investment objectives, financial situation and particular needs.
- (7) In this section, a reference to the making of a recommendation is a reference to the making of a recommendation whether expressly or by implication.

### **Priority given to client's order**

**93.** (1) Except as permitted by subsection (2)–

- (a) the holder of a Capital Markets Services Licence who carries on the business of dealing in securities or fund management when acting as principal or on behalf of a person associated with or connected to the holder; or
- (b) a representative of a holder of a Capital Markets Services Licence when acting for his own account or on behalf of a person associated with or connected to the representative,

shall not enter into a transaction of purchase or sale of securities that are permitted to be traded on the stock market of a stock exchange if a client of that holder or representative who is not associated with or connected to the holder or representative, has instructed the holder or representative to purchase or sell, respectively, securities of the same class and the holder or representative has not complied with the instruction.

- (2) Subsection (1) shall not apply in relation to the entering into of a transaction by the holder of a Capital Markets Services Licence who carries on the business of dealing in securities or fund management as principal or on behalf of a person associated with or connected to the holder, or by a representative of such a holder for his own account or on behalf of a person associated with or connected to the representative, if–
  - (a) the instructions from the client of such holder required the purchase or sale of securities on behalf of the client to be effected only on specified conditions relating to the price at which the securities were to be purchased or sold and the holder or a representative of the holder has been unable to purchase or sell the securities by reason of those conditions; or
  - (b) the transaction is entered into in prescribed circumstances.
- (3) A person who contravenes this section 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 five years or to both.

### **Dealings by employees of holders of licences or participating organisations**

**94.** (1) A holder of a Capital Markets Services Licence and an employee of such holder

shall not, as principal, jointly purchase or subscribe for, or agree to purchase or subscribe for, any securities.

- (2) A holder of a Capital Markets Services Licence shall not give any credit to its employee or to a person who, to the knowledge of such holder, is associated with such an employee if—
  - (a) the credit is given for the purpose of enabling or assisting the person to whom the credit is given to purchase or subscribe for any securities; or
  - (b) the person giving the credit knows or has reason to believe that the credit will be used for the purpose of purchasing or subscribing for securities.
- (3) A person who is an employee of a participating organisation shall not, as principal, purchase or agree to purchase any securities or rights or interests in securities unless the participating organisation acts as the agent of the person in respect of the transaction.
- (4) A person who contravenes this section 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 five years or to both.

### **Duty to furnish Commission with such returns and information as Commission requires**

- 95.** (1) A holder of a Capital Markets Services Licence shall furnish such returns and provide such information relating to its business as the Commission may require.
- (2) The Commission may specify that any information required under subsection (1) shall be submitted within such period, at such intervals, in such manner or in such form as the Commission may specify.

### **Additional obligations on licensed persons**

- 96.** (1) In addition to the requirements imposed on licensed persons under this Act, the Commission may impose—
- (a) in the case of licensed persons generally, or any class of licensed persons; or
  - (b) in the case of any particular licensed person, by written direction given to the person,
- any further requirements that the Commission considers appropriate with respect to the conduct or the financial affairs of such licensed persons.
- (2) A licensed person shall comply with any requirement imposed under subsection (1).

- (3) A person who contravenes this section 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 five years or to both.

### *Subdivision 2 – Securities*

#### **Dealings as principal**

- 97.** (1) Subject to subsection (4), a holder of a Capital Markets Services License who carries on the business of dealing in securities shall not, as principal, deal in any securities with a person who is not such a holder unless the holder first informs such person that the holder is acting in the transaction as principal and not as agent.
- (2) A reference in this section to a holder of a Capital Markets Services License who carries on the business of dealing in securities as principal includes a reference to a person–
- (a) dealing or entering into a transaction on behalf of a person associated with such holder;
  - (b) dealing in securities on behalf of a corporation in which it has a controlling interest; or
  - (c) where it carries on a business of dealing in securities on behalf of a corporation in which its interest and the interests of its directors together constitute a controlling interest.
- (3) A holder of a Capital Markets Services Licence who carries on the business of dealing in securities, who as principal, deals in securities with a person who is not such a holder shall state in the contract note that the holder is acting in the transaction as principal and not as agent.
- (4) Subsection (1) shall not apply to a transaction of sale or purchase of an odd lot of securities entered into by a holder of a Capital Markets Services Licence who is a participating organisation and specialises in transactions relating to odd lots of securities.
- (5) Where a holder of a Capital Markets Services Licence who carries on the business of dealing in securities contravenes subsection (1) or (3) in respect of a contract–
- (a) for the sale of securities by the holder, the purchaser of the securities may, if he has not disposed of them, rescind the contract by a notice of rescission in writing given to the holder not later than fourteen days after the receipt of the contract note or on becoming aware of the contravention of subsection (1) or (3), whichever is the later; or
  - (b) for a purchase of securities by the holder, the vendor of the securities may rescind the contract by a notice of rescission in writing given to the holder

not later than fourteen days after the receipt of the contract note or on becoming aware of the contravention of subsection (1) or (3), whichever is the later.

- (6) Any right of action that is conferred on a purchaser or vendor under subsection (5) is in addition to any right that such purchaser or vendor has under any other law.
- (7) A person who contravenes this section 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.

## Shortselling

- 98.** (1) Subject to this section and any regulations that may be made, a person shall not sell securities unless, at the time when he sells them—
- (a) he has or, where he is selling as agent, his principal has; or
  - (b) he believes on reasonable grounds that he has, or where he is selling as agent, his principal has,
- a presently exercisable and unconditional right to vest the securities in a purchaser of the securities.
- (2) 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 ten years or to both.
  - (3) For the purposes of subsection (1)—
    - (a) a person who, at any particular time, has a presently exercisable and unconditional right to have securities vested in him or in accordance with his directions shall be deemed to have at that time a presently exercisable and unconditional right to vest the securities in another person; and
    - (b) a right of a person to vest securities in another person shall not be deemed not to be unconditional by reason only of the fact that the securities are charged or pledged in favour of another person to secure the repayment of monies.
  - (4) Subsection (1) shall not apply in relation to—
    - (a) a sale of securities by the holder of a Capital Markets Services Licence who carries on the business of dealing in securities who specialises in transactions relating to odd lots of securities, being a sale made by him as principal solely for the purpose of—
      - (i) accepting an offer to purchase an odd lot of securities; or

- (ii) disposing of securities that are less than one marketable parcel of securities by means of the sales of one marketable parcel of those securities;
  - (b) a sale of securities by a person who before the time of sale has entered into a contract to purchase those securities and who has a right to have those securities vested in him that is conditional only upon all or any of the following:
    - (i) payment of the consideration in respect of the purchase;
    - (ii) the receipt by him of a proper instrument of transfer in respect of the securities; or
    - (iii) the receipt by him of the documents that are, or are documents of title to, the securities;
  - (c) a sale of securities where—
    - (i) the securities are included in a class of securities in relation to which there is a provision in the rules of the stock exchange to the effect that the class is a class of securities to which this paragraph applies;
    - (ii) the sale is made as may be provided by the rules of the stock exchange; and
    - (iii) at the time of the sale, neither the person who sold the securities, nor any person on behalf of whom the first-mentioned person sold the securities, was an associate, in relation to the sale, of the body corporate that issued or made available the securities;
  - (d) a sale of securities which are permitted by Bank Negara to be transacted in the short-term money market;
  - (e) a sale of securities—
    - (i) of such class or category; or
    - (ii) which is transacted in such manner or under such circumstances, as may be prescribed by the Minister; and
  - (f) the making or trading of a futures contract, or anything done in relation thereto, on the futures market of an futures exchange or on an exempt futures market.
- (5) For the purposes of this section, a “marketable parcel” in relation to securities that are listed for quotation on the stock market of a stock exchange, means a marketable parcel of those securities within the meaning of the rules of that stock exchange.

- (6) A person who instructs a holder of a Capital Markets Services Licence who carries on the business of dealing in securities to effect a sale of securities to which subsection (1) would apply but for paragraph (4)(c) shall, at the time of giving the instruction, inform the holder that the sale is a short sale.
- (7) A person who, on a stock market of a stock exchange, effects, whether as principal or agent, a sale of securities to which subsection (1) would apply but for paragraph (4)(c) shall cause to be endorsed on any document evidencing the sale that is given to the person who, whether as principal or agent, purchases the securities a statement that the sale was a short sale.
- (8) For the purposes of this section, where a person–
  - (a) purports to sell securities;
  - (b) offers to sell securities;
  - (c) holds himself out as entitled to sell securities; or
  - (d) instructs a holder of a Capital Markets Services Licence who carries on the business of dealing in securities to sell securities,
 he shall be deemed to sell the securities.

### *Subdivision 3 – Futures contracts*

#### **Trading in futures contracts on own account**

- 99. (1) A holder of a Capital Markets Services Licence who carries on the business of trading in futures contracts shall not, knowingly, take the other side of an order of a client of such holder in relation to a futures contract unless–
  - (a) the client has consented to the holder taking the other side of the order in relation to the futures contract; or
  - (b) in trading in the futures contract on behalf of the client, the holder is to be taken, for the purposes of this Act, to be trading in the futures contract on the holder’s own account.
- (2) For the purposes of subsection (1), a holder of a Capital Markets Services Licence who carries on the business of trading in futures contracts takes the other side of an order of a client of the holder in relation to a futures contract if the holder–
  - (a) when trading on the holder’s own account, assumes along position or short position in relation to the contract; and
  - (b) when trading on the instructions of the client, assumes the opposite short position or long position in relation to the contract.

## Documents to be given to prospective clients

- 100.** (1) The Commission may specify the nature and extent of information to be given to prospective clients of a holder of a Capital Markets Services Licence who carries on the business of trading in futures contracts and without limiting the generality of the foregoing, such specification may include a document that–
- (a) explains the nature of futures contracts;
  - (b) explains the nature of the obligations assumed by a person who instructs a holder of a Capital Markets Services Licence who carries on the business of trading in futures contracts to enter into a futures contract;
  - (c) sets out the risks of trading in futures contracts; and
  - (d) details of the essential terms of each kind of futures contract in which the holder trades on behalf of clients.
- (2) A holder of a Capital Markets Services Licence who carries on the business of fund management in respect of futures contract shall give to its client such information as may be specified by the Commission.

## Trading limits in futures contracts

- 101.** (1) The Commission or a futures exchange with the approval of the Commission may, by notice in writing from time to time, specify such limits as it considers necessary on the amount of trading which may be done or positions which may be assumed by any person under a futures contracts on a futures exchange or subject to the rules of the futures exchange.
- (2) In determining whether a person has exceeded the limits referred to in subsection (1), the positions assumed and trading done by any persons directly or indirectly controlled by such a person shall be included with the positions assumed and trading done by that person.
- (3) The limits referred to in subsection (1) upon positions and trading shall apply to positions assumed, and trading done, by two or more persons acting pursuant to an express or implied agreement or understanding as if the positions were assumed, or the trading done, by a single person.
- (4) A person shall not directly or indirectly–
- (a) trade or agree to trade in futures contracts on, or subject to the rules of, a futures exchange in excess of the trading limits specified for a period set out by the Commission or the futures exchange under this section; or
  - (b) assume a long position or a short position under a futures contract of any class on, or subject to the rules of, a futures exchange in excess of any position limit specified by the Commission or the futures exchange under this section with respect to that futures contract.

- (5) This section shall not preclude the Commission or a futures exchange from specifying different trading or position limits for different types or classes of futures contracts or different limits for the same type or class of futures contracts traded for different purposes, different delivery months or different days remaining until the last day of trading in a futures contract for the purpose of subsection (4).

### **Reportable positions**

- 102.** (1) The Commission may specify by notice in writing the size of aggregate long or short positions, or any combination of long and short positions, in relation to a type or class of futures contracts which—
- (a) may be assumed by a person; or
  - (b) may be assumed by a person and any of his associates,
- and in excess of which the person or the person and his associate shall report particulars of their positions to the Commission in the specified form and manner.
- (2) A person contravenes this section if he—
- (a) assumes a long or short position the effect of which is to exceed the size specified by the Commission under subsection (1); and
  - (b) does not report particulars of positions assumed by him, or by him and any of his associates, in the specified form and manner.

### **Futures contract not gaming or wagering contract**

- 103.** For the purposes of any written law, a futures contract made or traded—
- (a) on the futures market of a futures exchange; or
  - (b) on an exempt futures market,
- or anything done under such a futures contract, shall not be taken to be a gaming or wagering contract.

### **Sequence of sending and carrying out of orders**

- 104.** (1) A holder of a Capital Markets Services Licence who carries on the business of trading in futures contracts shall not instruct another holder to carry out the instructions of the first-mentioned holder's client unless the consent of that client has been obtained.
- (2) Subject to subsection (3), a holder of a Capital Markets Services Licence who carries on the business of trading in futures contracts shall send in the sequence in which they are received by the holder all instructions to trade in a class of futures contracts at or near the market price for a futures contract of that class prevailing immediately before the carrying out of the instructions.

- (3) If–
- (a) a holder of a Capital Markets Services Licence who carries on the business of trading in futures contracts proposes to trade in a class of futures contracts on the holder’s own account;
  - (b) the person by whom or on whose instructions, the instructions for the trading are to be sent is aware of the instructions of a client of the holder to trade in that class of futures contracts at or near the market price for a futures contract of that class prevailing at that time; and
  - (c) the client’s instructions have not been sent,

that person shall not send, and shall not give instructions to any other person to send, the instructions to give effect to the proposal of the holder to trade in that class of futures contracts before the instructions of the client are sent.

- (4) A holder of a Capital Markets Services Licence who carries on the business of trading in futures contracts or a director, officer, employee or representative of a holder of a Capital Markets Services Licence who carries on the business of trading in futures contracts, shall not, except–
- (a) to the extent necessary to carry out the instructions concerned;
  - (b) as required by this Act or any other law; or
  - (c) as required by the rules of any futures exchange of which the holder is an affiliate,

disclose to any other person the instructions of a client to trade in a class of futures contracts.

- (5) A holder of a Capital Markets Services Licence who carries on the business of trading in futures contracts who is an affiliate of a futures exchange and who is concerned in the carrying out, on a futures market of a futures exchange, of instructions to trade in futures contracts shall carry out in the sequence in which they are received by the holder all instructions to trade in a class of futures contracts at or near the market price for a futures contract of that class prevailing immediately before the carrying out of the instructions.

- (6) If–
- (a) during a particular period, a holder of a Capital Markets Services Licence who carries on the business of trading in futures contracts sends instructions (whether or not those instructions consist of or include instructions giving effect to the proposal of the holder to trade in the class of contracts concerned on the holder’s own account) to trade in a class of futures contracts at or near the market price for a futures contract of that class prevailing immediately before the carrying out of the instructions; and

- (b) trading in that class of futures contracts is effected under those instructions, the holder shall, except so far as the rules of the futures exchange of which the holder is an affiliate otherwise provide, allocate trading to those instructions—
    - (A) in the sequence in which the trading was effected; and
    - (B) in the sequence in which the holder sent those instructions.
- (7) A holder of a Capital Markets Services Licence who carries on the business of trading in futures contracts shall keep, in accordance with the regulations, records that set out the prescribed particulars of—
  - (a) the instructions by a client to trade in futures contracts;
  - (b) the date and time of receipt, sending and carrying out of those instructions;
  - (c) the person by whom those instructions are received, the person by whom they are sent and the person by whom they are carried out;
  - (d) the date and time of receipt, sending and carrying out of instructions to trade in futures contracts on the holder's own account; and
  - (e) the person by whom instructions of the kind referred to in paragraph (d) are received, the person by whom they are sent and the person by whom they are carried out,

and shall retain those records for the prescribed period.

- (8) If—
  - (a) a holder of a Capital Markets Services Licence who carries on the business of trading in futures contracts sends, for carrying out on a futures market outside Malaysia, instructions to trade in futures contracts; and
  - (b) it is not reasonably practicable for the holder to set out in the records kept by the holder under subsection (7), the prescribed particulars of the date and time of the carrying out of those instructions,

the holder shall set out those particulars as precisely as is reasonably practicable.

- (9) In this section, a reference to the sending of instructions to trade in a class of futures contracts by a holder of a Capital Markets Services Licence who carries on the business of trading in futures contracts is a reference if the holder has—
  - (a) direct access to the futures market on which the instructions are to be carried out, to the sending of the instructions to that futures market; or
  - (b) access to the futures market on which the instructions are to be carried out only through another holder of a Capital Markets Services Licence

who carries on the business of trading in futures contracts, to the sending of the instructions to that other holder.

### **Trading in futures contracts outside Malaysia**

- 105.** (1) A holder of a Capital Markets Services Licence who carries on the business of trading in futures contracts or carries on the business of fund management in relation to futures contracts shall not trade in a futures contract on any futures market outside Malaysia unless–
- (a) the futures market is a futures market of a Specified Exchange; or
  - (b) the futures contract is of an approved class of futures contracts.
- (2) If–
- (a) the Commission has reason to believe that a situation exists which, in the opinion of the Commission, is likely to affect the proper operation of the futures market of any Specified Exchange or cause a disruption to the orderly trading of futures contracts on such a futures market;
  - (b) it is shown that a holder of a Capital Markets Services Licence who carries on the business of trading in futures contracts or carrying on the business of fund management in relation to futures contracts or any of its employees, directors or representatives has acted in any manner, in relation to the operation–
    - (i) of any futures market of a futures exchange or in respect of which an approved clearing house provides clearing house facilities; or
    - (ii) of any futures market of a Specified Exchange,which is likely to prejudice the public interest;
  - (c) a holder of a Capital Markets Services Licence who carries on the business of trading in futures contracts or carrying on the business of fund management in relation to futures contracts has contravened–
    - (i) securities laws;
    - (ii) the rules of a futures exchange or an approved clearing house of which the holder of a Capital Markets Services Licence who carries on the business of trading in futures contracts or carrying on the business of fund management in relation to futures contracts is an affiliate; or
    - (iii) any condition applicable in respect of its licence; or
  - (d) other prescribed circumstances exist in respect of a holder of a Capital Markets Services Licence who carries on the business of trading in futures contracts or fund management in relation to futures contracts,

the Commission may direct–

- (A) the holder of a Capital Markets Services Licence who carries on the business of trading in futures contracts or fund management in relation to futures contracts to cease trading in futures contracts, or in any class of futures contracts, on the futures market of any Specified Exchange; or
  - (B) that trading in futures contracts, or in any class of futures contracts, by the holder of a Capital Markets Services Licence who carries on the business of trading in futures contracts or fund management in relation to futures contracts on the futures market of any Specified Exchange be limited to the closing out of futures contracts.
- (3) For the purposes of this section and section 106–
- (a) a Specified Exchange is such futures market as may be provided in the rules of the futures exchange as a Specified Exchange; or
  - (b) an approved class of futures contracts is such class of futures contracts of the futures market of a Specified Exchange as provided in the rules of the futures exchange as an approved class of futures contracts.
- (4) Any holder of a Capital Markets Services Licence who carries on the business of trading in futures contracts or fund management in relation to futures contracts who contravenes subsection (1) or any direction made under subsection (2) 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.

### **Amounts to be paid for trading in Specified Exchanges**

- 106.** (1) A holder of a Capital Markets Services Licence who carries on the business of trading in futures contracts or fund management in relation to futures contracts shall not trade in the futures market of a Specified Exchange unless he has paid to the Commission one hundred thousand ringgit or such other amount as may be determined by the Commission.
- (2) The monies paid under subsection (1) shall be applied on the occurrence of any of the following events:
- (a) where the holder of a Capital Markets Services Licence who carries on the business of trading in futures contracts or fund management in relation to futures contracts is being wound up;
  - (b) where there is a default by the holder of a Capital Markets Services Licence who carries on the business of trading in futures contracts or fund management in relation to futures contracts traded on a Specified Exchange; or
  - (c) such other specified events,

in such manner as the Commission may determine.

### **Failure to comply with sections 99, 100, 101, 102 and 104**

- 107.** A person who contravenes sections 99, 100, 101, 102 and 104 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.

## **DIVISION 4**

### **Books, Client's Assets Protection and Audit**

#### *Subdivision 1 – Books*

### **Keeping of books and furnishing of returns**

- 108.** (1) A holder of a Capital Markets Services Licence shall–
- (a) maintain, or cause to be maintained, in the national language or English language such accounting records and other books as will sufficiently explain the transactions and financial position of its business and enable true and fair profit and loss accounts and balance sheets to be prepared from time to time; and
  - (b) maintain, or cause to be maintained, such accounting records and other books in such a manner as will enable them to be conveniently and properly audited.
- (2) An entry in the accounting records and other books of a holder of a Capital Markets Services Licence required to be maintained in accordance with this section shall be deemed to have been made by, or with the authority of, the holder.
- (3) A holder of a Capital Markets Services Licence shall retain such accounting records and other books as may be required to be maintained under this Act for a period of not less than seven years.
- (4) A holder of a Capital Markets Services Licence shall–
- (a) furnish such returns and records in such form and manner as may be specified by the Commission; and
  - (b) provide such information relating to its business as may be specified by the Commission.
- (5) Without prejudice to the generality of subsection (1), every holder of a Capital Markets Services Licence shall maintain such accounting records and other books in such form and manner as may be specified by the Commission.
- (6) A person who–

- (a) contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit; or
- (b) with intent to defraud, contravenes this section, commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding ten years or to both.

### *Subdivision 2 – Treatment of client’s assets in respect of securities*

#### **Application of this Subdivision**

**109.** This Subdivision applies to a holder of a Capital Markets Services Licence who carries on the business of dealing in securities whether that business is carried on within or outside Malaysia.

#### **Interpretation**

**110.** In this Subdivision, unless the context otherwise requires–

“a holder of a Capital Markets Services Licence” means a holder of a Capital Markets Services Licence who carries on the business of dealing in securities;

“client’s assets” include monies or other property received or retained by, or deposited with, a holder of a Capital Markets Services Licence in the course of its business for which the holder is liable to account to its client, and any monies or other property accruing therefrom.

#### **Certain monies received by holder of Capital Markets Services Licence to be paid into trust account**

**111. (1)** A holder of a Capital Markets Services Licence shall establish and keep in a licensed institution one or more trust accounts designated or evidenced as such into which he shall pay–

- (a) all amounts, less any brokerage and other proper charges, that are received from or on account of any person, other than a holder of a Capital Markets Services Licence, for the purchase of securities and that are not attributable to securities delivered to a holder of a Capital Markets Services Licence not later than the next bank business day or such other day as may be specified by the Commission on which they were received by such holder; and
- (b) all amounts, less any brokerage and other proper charges, that are received for or on account of any person, other than a holder of a Capital Markets Services Licence, from the sale of securities and that are not paid to that person or as that person directs not later than the next bank business day or such other day as may be specified by the Commission on which they were received by such holder.

- (2) For the purposes of paragraph (1)(b), any cheque issued for the purpose of payment to a person which is not collected by that person or as directed by that person within five bank business days or such other day as may be specified by the Commission, after the date such cheque is issued shall be credited into the trust account.
- (3) A holder of a Capital Markets Services Licence who—
  - (a) contravenes this section commits an offence and is liable on conviction to a fine not exceeding one million ringgit; or
  - (b) with intent to defraud, contravenes this section 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.

### **Client's assets other than monies received by holder of Capital Markets Services Licence**

- 112.** (1) A holder of a Capital Markets Services Licence shall deal with any client's assets other than monies, received, held or deposited with it in the course of its business, and for which it is liable to account to its client, in such manner as may be prescribed in regulations made under this Act.
- (2) A holder of a Capital Markets Services Licence who contravenes this section 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 five years or to both.

### **Withdrawal of monies from trust account**

- 113.** (1) A holder of a Capital Markets Services Licence shall not withdraw any monies from a trust account except for the purpose of making a payment—
- (a) to, or in accordance with the written instructions of, a person entitled to the monies;
  - (b) defraying brokerage and any other proper charges; or
  - (c) that is otherwise authorised by law.
- (2) Except as provided in subsection (1), monies held in a trust account shall not be available for payment of the debts of a holder of a Capital Markets Services Licence or be liable to be paid or taken in execution under an order or process of any court.
- (3) A person who contravenes this section 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.

## **Holder of Capital Markets Services Licence to supply copies of entries in books**

- 114.** (1) A holder of a Capital Markets Services Licence shall supply, on demand, to its clients or any person authorised by the client, copies of all entries in its books relating to any transaction carried out on behalf of that client and the holder shall be entitled to levy a reasonable charge therefor.
- (2) A client or any person authorised by the client shall be entitled at any time to inspect any contract notes or documents relating to the transaction referred to in subsection (1) free of charge.

## **Claims and liens not affected**

- 115.** Nothing in this Subdivision shall be construed as taking away or affecting any lawful claim or lien which any person has against or upon any monies—
- (a) held in a trust account; or
- (b) received for the purchase of securities or from the sale of securities before such monies are paid into a trust account.

### *Subdivision 3 – Treatment of client’s assets in respect of futures contracts*

## **Application of this Subdivision**

- 116.** This Subdivision applies to a holder of a Capital Markets Services Licence who carries on the business of trading in futures contracts whether that business is carried on within or outside Malaysia.

## **Interpretation**

- 117.** (1) For the purposes of this Subdivision, unless the context otherwise requires—
- “a holder of a Capital Markets Services Licence” means a holder of a Capital Markets Services Licence who carries on the business of trading in futures contract;
- “client”, in relation to a holder of a Capital Markets Services Licence, means a person on behalf of whom the holder trades or from whom the holder accepts instructions to trade in futures contracts;
- “client’s assets” include monies or other property received or retained by, or deposited with, a holder of a Capital Markets Services Licence in the course of its business for which the holder is liable to account to its client, and any monies or other property accruing therefrom;
- “credit facility” means a document evidencing the right of a person to obtain a loan or other facility from another person and, without prejudice to the generality of the foregoing, includes a letter of credit and a bank guarantee;

“property” includes credit facilities;

“relevant credit balance”, in relation to a client of a holder of a Capital Markets Services Licence, means the total of–

- (a) the amounts deposited in respect of the client in a client’s segregated account, of the holder, less so much of those amounts as has been withdrawn from the account; and
- (b) the value of property other than monies that–
  - (i) have, in respect of the client, been deposited by the holder in safe custody under section 118 and have not been withdrawn from safe custody; and
  - (ii) under the terms and conditions on which they were deposited with, or received by, the holder, are available to meet, or to provide security in connection with the meeting of, relevant liabilities of the client;

“relevant liabilities”, in relation to a client of a holder of a Capital Markets Services Licence, means debts and liabilities of the client arising out of trading in futures contracts effected by the holder on behalf of the client;

“settling”, in relation to a trading in a futures contract, includes making delivery, or taking delivery, of an instrument to which the futures contract relates.

- (2) For the purposes of the definition of “relevant credit balance” in subsection (1), the value of an item of property at a particular time is–
  - (a) if the item is a credit facility, the amount of monies that the person entitled to the right evidenced by the credit facility can, at that time or within a reasonable period after that time, obtain because of that right; or
  - (b) if it is otherwise than a credit facility, the market value of the property as at the end of the last business day before that time.

### **Segregation of client’s assets**

- 118.** (1) If any client’s assets are deposited with, or are received by, a holder of a Capital Markets Services Licence for or on behalf of a client of the holder in connection with–
- (a) trading in futures contracts effected or proposed to be effected, whether within or outside Malaysia; or
  - (b) instructions by such client, whether within or outside Malaysia,
- the holder shall–
- (A) in respect of monies, deposit the monies in a client’s segregated account

of the holder kept and maintained within Malaysia or in the place where the monies was deposited with or received by, the holder; or

- (B) in respect of property, deposit the property in safe custody within Malaysia or in the place where the property was deposited with or received by the holder, in such a manner that the property is segregated from property other than property deposited by the holder in safe custody under this subsection,

not later than the next bank business day or such other day as may be specified by the Commission after the monies or property is deposited with or received by, the holder that is a day on which the amount or property can be deposited as first mentioned in paragraph (A) or (B), as the case may be.

- (2) Without prejudice to the generality of subsection (1), if in connection with trading in futures contracts effected, whether within or outside Malaysia, by a holder of a Capital Markets Services Licence, the holder receives from a person an amount of monies, some or all of which is attributable to trading in futures contracts so effected, whether within or outside Malaysia, on behalf of the clients of the holder, the holder shall, no later than the next bank business day or such other day as may be specified by the Commission on which the amount can be so deposited, deposit the amount in a client's segregated account kept and maintained within Malaysia or in the place where the holder receives the amount.
- (3) A holder of a Capital Markets Services Licence shall not withdraw any monies in the client's segregated account except for the purpose of—
- (a) making a payment to or in accordance with the written direction of, a person entitled to the monies;
  - (b) making a payment for or in connection with, the entering into, margining, guaranteeing, securing, transferring, adjusting or settling of trading in futures contracts effected by the holder on behalf of the client;
  - (c) defraying brokerage and other proper charges incurred in respect of trading in futures contracts effected by the holder on behalf of the client;
  - (d) investing it—
    - (i) on deposit at interest with a licensed bank;
    - (ii) on deposit with an approved clearing house for a futures exchange;  
or
    - (iii) in any other prescribed manner; or
  - (e) making a payment that is otherwise authorised by law or by the rules of a futures exchange or an approved clearing house of which the holder is an affiliate,

or as permitted by subsection (7).

- (4) A holder of a Capital Markets Services Licence shall not deal with property deposited by the holder in safe custody under subsection (1) except in accordance with the terms and conditions on which the property was deposited with or received by, the holder.
- (5) A holder of a Capital Markets Services Licence shall not invest an amount under paragraph (3)(d) by depositing it with a person for that person to invest unless the holder—
  - (a) has told the person that the amount has been withdrawn from a client's segregated account of the holder and is monies to which the clients of the holder are entitled; and
  - (b) has obtained from the person a written statement that is signed by the person, setting out the amount and acknowledging that the holder has informed the person as required under paragraph (a).
- (6) If, at any particular time, the total amount of the relevant liabilities of a client of a holder of a Capital Markets Services Licence exceeds the relevant credit balance of the client, the holder may, in respect of the client, deposit in a client's segregated account of the holder an amount of monies not greater than the amount of the excess, and, if the holder does so, the amount so deposited is to be taken, subject to subsection (7), to be monies to which the client is entitled.
- (7) If—
  - (a) a holder of a Capital Markets Services Licence has, in respect of a client of the holder, deposited an amount under subsection (6) in a client's segregated account of the holder; and
  - (b) the relevant credit balance of the client exceeds the total amount of the relevant liabilities of the client,the holder may withdraw from the account so much of the amount referred to in paragraph (a) as does not exceed the amount of the excess referred to in paragraph (b).
- (8) A holder of a Capital Markets Services Licence shall keep, in relation to any client's segregated account, accounting records that—
  - (a) are separate from any other accounting records of the holder;
  - (b) record separately in respect of each client of the holder particulars of the amounts deposited in and the amounts withdrawn from the client's account; and
  - (c) record separately from the particulars referred to in paragraph (b)–

- (i) particulars (including particulars of withdrawals) of so much of the amounts deposited in accordance with subsection (2) in the account as was not attributable to trading in futures contracts effected by the holder on behalf of its clients;
  - (ii) particulars of all amounts deposited in the account under subsection (6); and
  - (iii) particulars of all amounts withdrawn from the account under subsection (7).
- (9) A holder of a Capital Markets Services Licence shall keep records that–
- (a) relate to the deposits of property in safe custody by the holder under subsection (1); and
  - (b) record separately the particulars of the property deposited in respect of each client.
- (10) Section 108 shall apply in relation to accounting records and any other records that are required by subsections (8) and (9) to be kept by the holder, and shall apply as if those accounting records and other records were accounting records required by that section to be kept by the holder.
- (11) A person who contravenes this section 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.

### **Monies in segregated account not available for payment of debt, etc.**

- 119.** (1) Notwithstanding anything contained in the Companies Act 1965, but subject to subsections (2) and (3)–
- (a) monies deposited by a holder of a Capital Markets Services Licence under section 118 in a client’s segregated account of the holder;
  - (b) property in which monies deposited by a holder of a Capital Markets Services Licence as mentioned in paragraph (a) has been invested under paragraph 118(3)(d); and
  - (c) property deposited by a holder of a Capital Markets Services Licence in safe custody under subsection 118(1),
- shall not be available for the payment of a debt or liability of such holder or liable to be attached or taken in execution under the order or process of a court at the instance of a person suing in respect of such a debt or liability.
- (2) Nothing in subsection (1) affects the right of a client of a holder of a Capital Markets Services Licence to recover monies or property to which the client is entitled.

- (3) Subsection (1) does not apply in relation to monies that a holder of a Capital Markets Services Licence is entitled to withdraw monies from a client's segregated account of the holder for the purpose of making a payment to the holder or otherwise under subsection 118(3).
- (4) If a holder of a Capital Markets Services Licence invests monies under paragraph 118(3)(d) by depositing it with a person for the person to invest, neither that monies nor any property in which the person invests any of that monies, is available for the payment of a debt or liability of the person or is liable to be attached or taken in execution under the order or process of a court at the instance of a person suing in respect of such a debtor liability.
- (5) Without prejudice to the rights of a holder of a Capital Markets Services Licence under any other written law, subsection (4) may only be invoked by the holder or any person claiming on behalf of or in the name of the holder for the purpose of settling any liabilities due to an approved clearing house, in respect of futures contracts effected by the holder for the clients to whom any monies or property referred to in subsection (4) relates.
- (6) Nothing in section 118 and this section shall affect a claim or lien that a holder of a Capital Markets Services Licence has, in relation to a business of trading in futures contracts carried on by it, under an agreement, any law within or outside Malaysia, against or on—
  - (a) monies deposited by the holder under section 118 in a client's segregated account of the holder;
  - (b) property in which monies so deposited has been invested under paragraph 118(3)(d); or
  - (c) property deposited by the holder in safe custody under subsection 118(1).
- (7) A person who contravenes this section 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.

#### *Subdivision 4 – Treatment of client's assets in respect of fund management*

##### **Application of this Subdivision**

- 120.** (1) This Subdivision applies to a holder of a Capital Markets Services Licence who carries on the business of fund management.
- (2) Nothing in this Subdivision shall apply to a corporation which manages a portfolio of securities or futures contracts solely for or on behalf of any of its related corporations, provided that the second-mentioned corporation's securities or futures contracts being managed by the first-mentioned corporation are not securities or futures contracts held on trust or on behalf of or beneficially belonging to any other person, or as a result of any investment contract entered into by the second-mentioned corporation.

- (3) For the purposes of this section, “investment contract” has the meaning assigned to it in subsection 84(1) of the Companies Act 1965.

## Interpretation

**121.** For the purposes of this Subdivision, unless the context otherwise requires–

“a holder of a Capital Markets Services Licence” means a holder of a Capital Markets Services Licence who carries on the business of fund management;

“client’s assets” includes monies or other property received or retained by, or deposited with a holder of a Capital Markets Services Licence received in the course of his business for which the holder is liable to account to its client, and includes, monies received or property deposited with or held by a custodian or by any other person as may be permitted by the Commission under this Subdivision for which it is liable to account or deliver to the client;

“custodian”, in relation to a client of a holder of a Capital Markets Services Licence, means–

- (a) a licensed bank as defined in the Banking and Financial Institutions Act 1989 appointed by the fund manager with the prior written consent of the client;
- (b) a licensed merchant bank as defined in the Banking and Financial Institutions Act 1989 appointed by a fund manager with the prior written consent of the client;
- (c) a trust company registered under the Trust Companies Act 1949 [Act 100];
- (d) Amanah Raya Berhad;
- (e) a participating organisation;
- (f) a wholly owned subsidiary of any institution specified under paragraphs (a), (b) and (e) that provides nominee services; or
- (g) any other person as may be specified by writing by the Commission;

“trust account” means a current, deposit or property account which–

- (a) is kept with a custodian; or
- (b) is kept by any person as may be permitted by the Commission under subsection 122(2).

## Operation of trust account

**122.** (1) A holder of a Capital Markets Services Licence shall open a trust account for its client’s assets and shall make arrangements for a custodian to maintain such trust account.

- (2) The Commission may, where it thinks fit to do so, exempt a holder of a Capital Markets Services Licence from the requirement under subsection (1) to arrange for a custodian to maintain the trust account and permit any other person to maintain the trust account.
- (3) A holder of a Capital Markets Services Licence shall deposit client's assets into the trust account maintained by a custodian or any other person as may be permitted by the Commission under subsection (2), as the case may be, not later than the next bank business day or such other day as may be specified by the Commission, following the day on which the holder receives the client's assets.
- (4) Notwithstanding subsection (1), where client's assets that are required by this section to be deposited into a trust account are received by a holder of a Capital Markets Services Licence in a place outside Malaysia, the holder may deposit such assets into a trust account maintained by it in that place.
- (5) A holder of a Capital Markets Services Licence shall not withdraw from or deal with client's assets in a trust account except for the purpose of making a payment—
  - (a) to the person entitled thereto; or
  - (b) that is otherwise authorised by law.
- (6) Except as otherwise provided in this Subdivision, client's assets held in a trust account shall not be available for the payment of the debts of a holder of a Capital Markets Services Licence or liable to be paid or taken in execution under an order or process of court for the payment of the debt of a holder of a Capital Markets Services Licence.
- (7) The holder of a Capital Markets Services Representative's licence which permits the holder to carry on the business of fund management shall neither accept nor hold client's assets unless he does so on behalf of a holder of a Capital Markets Services Licence and in the course of employment under a contract of employment with such holder.
- (8) Nothing in this Subdivision shall be construed as taking away or affecting any lawful claim or lien which any person has against or upon any client's assets held in a trust account or against or upon any client's assets received for the purchase or from the sale of securities before such assets are deposited into the trust account.
- (9) A person who—
  - (a) contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit; or
  - (b) with intent to defraud, contravenes this section 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.

## **Client's assets**

- 123.** (1) A holder of a Capital Markets Services Licence shall not deal in securities or trade in futures contracts for or on behalf of a client unless, to the extent that the holder receives client's assets–
- (a) the holder does so on the basis that the assets shall be applied solely for specified purposes agreed when or before the holder receives the assets;
  - (b) pending such application, the assets are deposited by the next bank business day or such other day as may be specified by the Commission to a custodian with whom a trust account is maintained in accordance with this Subdivision or to any other person as may be permitted by the Commission under subsection 122(2); and
  - (c) a separate book entry shall be recorded and maintained for each client by the holder in accordance with this Act or any guidelines issued by the Commission, in relation to client's assets.
- (2) A holder of a Capital Markets Services Licence who contravenes subsection (1) commits an offence.

## **Right to copies of book entries, inspection of contract notes, etc.**

- 124.** (1) A holder of a Capital Markets Services Licence shall supply, on demand, to his client or any person authorised by the client, copies of all entries in his books relating to the client's transaction.
- (2) A person referred to in subsection (1) shall be entitled to inspect any contract note or document relating to the client's transaction free of charge.

### *Subdivision 5 – Range of actions Commission may take to protect clients of licensed persons under certain circumstances*

## **Commission's actions to protect client's assets, etc.**

- 125.** (1) Without prejudice to section 354, 355 or 356, where–
- (a) a licensed person or a trustee who has been approved by the Commission under section 260 or 289 has contravened this Act or guidelines issued under this Act;
  - (b) the interests of the clients of the holder of a Capital Markets Services Licence or the interests of debenture holders or unit holders are likely to be jeopardised, or are jeopardised;
  - (c) any of the grounds exist for which the licence may not be granted or renewed under section 64 or 65, or in respect of which an approval may not be granted under section 260 or 289; or

- (d) any of the grounds exist for which the licence may be revoked or suspended under section 72 or any action which may be taken pursuant to section 262, 290 or 292,

the Commission may take any one or more of the following actions, where relevant:

- (i) direct–
    - (A) the licensed person not to deal with monies and properties of its clients in such manner as the Commission thinks appropriate;
    - (B) a licensed person to whom a direction under subparagraph (i)(A) applies, to transfer the monies and properties of its clients or any records or documents in relation to such monies or properties to any other person as may be specified by the Commission; or
    - (C) a trustee to transfer any records or documents in relation to monies or properties to any other persons may be specified by the Commission;
  - (ii) prohibit the licensed person from–
    - (A) entering into transactions of a specified description, in specified circumstances or to a specified extent;
    - (B) soliciting business from persons of a specified description; or
    - (C) carrying on business in a specified manner; or
  - (iii) require a licensed person or trustee to carry on business in a specified manner.
- (2) Where any action is taken under subsection (1) is in respect of a licensed person, the Commission may by notice in writing require a licensed person to maintain property within Malaysia and in any specified place outside Malaysia such that–
- (a) the property maintained is of the value and of the description that appear to the Commission to be necessary to ensure that the licensed person will be able to meet its liabilities in relation to the regulated activity for which it is licensed; and
  - (b) the property is maintained in a manner that will enable the holder of a Capital Markets Services Licence at any time freely to transfer or otherwise dispose of the property.
- (3) Where a direction, condition, prohibition or requirement imposed under subsection (1) or (2) is in force, the Commission may, where it considers appropriate to do so by notice in writing given to the person on whom the direction, condition, prohibition or requirement is imposed–

- (a) withdraw the direction, condition, prohibition or requirement; or
- (b) substitute another direction, condition, prohibition or requirement for or vary the direction, condition, prohibition or requirement,

and such direction, condition, prohibition or requirement so withdrawn or substituted shall remain in force in accordance with the terms thereof until it is—

- (A) withdrawn; or
  - (B) substituted by another direction, condition, prohibition or requirement or varied, by the Commission under this section.
- (4) Nothing contained in this Act, rules, terms of any contract or any other law shall invalidate any action taken by the Commission under this section.
  - (5) The Commission shall not take any action under this section without giving a licensed person or a trustee an opportunity to be heard.
  - (6) Subsection (5) shall not apply if the Commission considers that any delay in taking an action under this section by giving an opportunity to be heard would be prejudicial to the public interest or the interest of the clients of the licensed person.

### *Subdivision 6 – Audit*

#### **Appointment of auditor**

- 126.** (1) This Subdivision applies to the business of a holder of a Capital Markets Services Licence, an exchange holding company, a stock exchange, a futures exchange, an approved clearing house, a central depository and a recognised self-regulatory organisation.
- (2) A reference to a relevant person in this Subdivision shall be construed as a reference to persons referred to in subsection (1).
  - (3) Notwithstanding the provisions of the Companies Act 1965, a relevant person shall appoint an auditor to carry out for the year in respect of which he is appointed an audit of the accounts of the relevant person.
  - (4) A relevant person shall not appoint a person who is an associate of the relevant person as an auditor of any of its accounts.
  - (5) A relevant person—
    - (a) shall remove an auditor who becomes ineligible by virtue of subsection (4); and
    - (b) may in any other case, with the Commission’s written consent, remove an auditor from office.

- (6) An auditor of a relevant person may resign from his office by giving a notice in writing to that effect to the Commission provided that such notice shall be accompanied by–
- (a) a statement of any circumstances connected with his ceasing to hold office which he considers should be brought to the attention of the Commission; or
  - (b) if he considers that there are no such circumstances, a statement that there are none.
- (7) Notwithstanding any other provisions of this Act, the Commission may at any time remove an auditor appointed by a relevant person if the Commission is not satisfied with the manner in which the auditor is performing his duties.

### **Relevant person to lodge auditor's report**

- 127.** (1) A relevant person shall, within three months after the close of each financial year, or such further period as the Commission may permit under subsection (2), lodge with the Commission, the auditor's report containing information on such matters as may be specified.
- (2) Where an application for the extension of the period of three months specified in subsection (1) is made by a relevant person to the Commission and if the Commission is satisfied that there are special reasons for requiring the extension, the Commission may extend that period by a further period of not exceeding three months subject to such conditions as the Commission thinks fit to impose.
- (3) A relevant 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 three years or to both.
- (4) For the purposes of subsection (1), "financial year", in relation to a relevant person, means the financial year of the corporation within the meaning of the Companies Act 1965.

### **Duties of auditor**

- 128.** (1) Where in the performance of his duties as auditor for a relevant person, an auditor becomes aware–
- (a) of any matter which in his opinion may constitute a breach of this Act or any securities laws;
  - (b) of any irregularity that may have a material effect upon the accounts of the relevant person, including any irregularity that jeopardises or may jeopardise the funds or property of the clients of the relevant person, where applicable;

- (c) that losses have been incurred by the relevant person who is the holder of a Capital Markets Services Licence which renders the relevant person to be unable to meet the minimum financial requirements as may be prescribed in the regulations made under this Act;
- (d) that the auditor is unable to confirm that the claims of clients or creditors of the relevant person are covered by the assets of the relevant person;
- (e) that an offence in connection with the business of the relevant person has been committed; or
- (f) in the case of a relevant person who is a holder of a Capital Markets Services Licence, that there has been a contravention of the rules of a stock exchange, a futures exchange, an approved clearing house or a central depository,

the auditor shall immediately report the matter to—

- (A) in the case of a participating organisation, the stock exchange and the Commission;
  - (B) in the case of a holder of a Capital Markets Services Licence who carries on the business of trading in futures contracts, the futures exchange and the Commission; or
  - (C) in any other case, the Commission.
- (2) No auditor shall be liable to be sued in any court in respect of any statement made by the auditor in good faith in the discharge of his duties under this Subdivision.
- (3) The Commission may at any time require an auditor appointed under this Subdivision—
- (a) to submit such additional information in relation to his audit as the Commission may specify;
  - (b) to enlarge or extend the scope of his audit of the business and affairs of the relevant person in such manner or to such extent as the Commission may specify;
  - (c) to carry out any specific examination or establish any procedure in any particular case;
  - (d) to submit a report on any of the matters referred to in paragraphs (a) to (c); or
  - (e) to submit an interim report on any of the matters referred to in paragraphs (a) to (d),

and the Commission may specify the time within which any of the aforesaid requirements shall be complied with by the auditor and may specify the remuneration which the relevant person shall pay to the auditor in respect thereof.

- (4) The auditor shall comply with any requirement of the Commission under subsection (3) and the relevant person shall remunerate the auditor in respect of the discharge by him of all or any of these additional duties.
- (5) The relevant person shall provide such information and access to such information as the auditor shall require in respect of the discharge by him of all or any of the additional duties under this Subdivision.

### **Duty of relevant person or its directors or officers to furnish information**

- 129.** (1) A relevant person and any director or officer of the relevant person shall—
- (a) furnish to an auditor appointed under any provision of this Subdivision—
    - (i) all the information within its or his knowledge or which it or he is capable of obtaining; or
    - (ii) any information which the auditor requires to enable him to carry out his duties; and
  - (b) ensure that all the information which is furnished to the auditor, including information furnished under paragraph (a), is not false or misleading in any material particular.
- (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 three years or to both.
- (3) It shall be a defence to any proceedings in defamation in respect of any statement made in any such report of an auditor or in any such further report of a relevant authority if the defendant satisfies the court that the statement was made *bona fide* and without malice.

### **Power of Commission to appoint independent auditor, etc.**

- 130.** (1) Where—
- (a) a relevant person has failed to submit the auditor's report in compliance with subsection 127(1); or
  - (b) the Commission has received a report under section 127 or 128,
- the Commission may, if the Commission is satisfied that it is in the interests of the relevant person concerned, the members or the clients of that relevant person to do so, appoint in writing an independent auditor or such other person or body of persons as the Commission may decide, to examine, audit and report, either

generally or in relation to any particular matter, upon the books, accounts and records of, and assets held by the relevant person.

- (2) Where the Commission is of the opinion that the whole or any part of the costs and expenses of an independent auditor, person or body of persons appointed by the Commission under this section should be borne by the relevant person concerned, the Commission may, by order in writing, direct such relevant person to pay a specified amount, being the whole or part of such costs and expenses, within the time and in the manner specified.
- (3) Where a relevant person has failed to comply with an order of the Commission under subsection (2), the amount specified in the order may be sued for and recovered by the Commission in a court as a debt due to the Commission.

### **Power of Commission to appoint independent auditor, etc., upon application**

- 131.** (1) Upon receipt of an application in writing from a person who alleges that a relevant person has failed to account to him in respect of any monies or assets held or received by that relevant person for or on his behalf, the Commission may appoint in writing an independent auditor or such other person as the Commission may decide to examine, audit and report either generally or in relation to any particular matter upon the books, accounts and records of, and assets held by that relevant person.
- (2) Every application under subsection (1) shall state—
    - (a) particulars of the circumstances under which the relevant person received the monies or assets in respect of which he is alleged to have failed to account;
    - (b) particulars of those monies or assets and of the transactions of the applicant and the relevant person relating thereto; and
    - (c) such other particulars as the Commission may require.
  - (3) Every statement in any such application shall be verified by a statutory declaration made by the applicant and shall, if made *bona fide* and without malice, be privileged.
  - (4) The Commission shall not appoint an independent auditor or such other person under subsection (1) unless the Commission is satisfied—
    - (a) that the applicant has good reason for making the application; and
    - (b) that it is expedient in the interests of the relevant person or the applicant or the general public that the books, accounts and records of, and assets held by the relevant person should be examined, audited and reported upon.

## **Independent auditor, etc., to report to Commission**

- 132.** An independent auditor or such other person appointed by the Commission under section 130 or 131 shall, upon the conclusion of the examination and audit in respect of which such auditor or other person was appointed, make a report thereon to the Commission.

## **Powers of independent auditor appointed by Commission**

- 133.** An independent auditor or such other person appointed by the Commission under section 130 or 131 to examine and audit the books, accounts and records of, and assets held by a relevant person may, for the purpose of carrying out such examination and audit—
- (a) examine on oath any director, executive officer or the secretary of the relevant person concerned and any of the relevant person's employees and agents and any other auditor appointed under this Act in relation to those books, accounts, records and assets;
  - (b) employ such persons as he considers necessary; and
  - (c) by instrument in writing under his hand authorise any person employed by him to do, in relation to such examination and audit, any act or thing that he could himself do in his capacity as auditor, except to examine any person on oath or to exercise the power conferred by this paragraph.

## **Prohibition against communication of certain matters by independent auditors, etc., and employees**

- 134.** Except for the purpose of carrying into effect the provisions of this Act, or so far as may be required for the purpose of any proceedings, civil or criminal, an independent auditor or such other person appointed by the Commission under section 130 or 131 and an employee of such auditor or other person shall not communicate any matter, which may come to his knowledge in the performance of his duties to any person other than the Commission, or any other person specified by the Commission and, in the case of an employee, to any person other than the auditor by whom he is employed.

## **Books, accounts and records to be produced upon demand**

- 135.** (1) Upon request by an independent auditor or such other person appointed by the Commission under section 130 or 131 or by a person who produces a written authority in that behalf given under paragraph 133(c)—
- (a) a relevant person and any of its directors, executive officer or secretary, employee or agent shall produce any books, accounts and records of, and any assets held by the relevant person relating to his business; and
  - (b) an auditor appointed by a relevant person shall produce any books, accounts and records held by him relating to the business of the relevant person.

- (2) A relevant person and any of its directors, executive officer, secretary, employee or agent and any auditor appointed by the relevant person, shall answer all questions relevant to an examination and audit which are put to him by an independent auditor or such other person appointed by the Commission under sections 130 and 131 or by a person who produces a written authority in that behalf given under paragraph 133(c).
- (3) A person who contravenes subsection (1) or (2) 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 five years or to both.

### **Penalty for destroying, concealing or altering books or sending books or property out of Malaysia**

**136.** (1) A person who, with intent to defeat the purposes of this Subdivision or with intent to prevent, delay or obstruct the carrying out of any examination and audit under this Subdivision—

- (a) destroys, conceals or alters any books or property relating to the business of a relevant person; or
- (b) sends or attempts to send or conspires with any other person to send out of Malaysia any such books or any property of any description belonging to or in the disposition of or under the control of a relevant person,

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.

(2) If in a prosecution for an offence under subsection (1), it is proved that the person charged—

- (a) destroyed, concealed or altered any books or property referred to in subsection (1); or
- (b) sent or attempted to send or conspired to send out of Malaysia any such books or any property referred to in subsection (1),

the onus of proving that in so doing he did not act with intent to defeat the purposes of this Subdivision or with intent to prevent, delay or obstruct the carrying out of an examination and audit under this Subdivision shall lie on him.

### **Rights of exchange to impose obligations**

**137.** The provisions of this Subdivision shall not prevent a stock exchange or a futures exchange, as the case may be, from imposing on any participating organisation or holder of a Capital Markets Services Licence who carries on the business of trading in futures contracts, any further obligation or requirement which such stock exchange or futures exchange thinks fit with respect to—

- (a) the audit of accounts;

- (b) the information to be furnished in reports from auditors; or
- (c) the keeping of accounts, books and records.

## **DIVISION 5**

### **Vesting**

#### **Interpretation**

**138.** In this Division, unless the context otherwise requires–

“business” means any activity which a holder of a Capital Markets Services Licence carries on pursuant to its licence and includes all property derived from, or used in connection with, or for the purpose of carrying on such activity and all rights and liabilities arising from such activity;

“liabilities” includes debts, duties and obligations of every kind, whether present, future, vested or contingent;

“property” means any movable or immovable property and includes–

- (a) in relation to any property, any right, interest, title, claim, chose in action, power or privilege, whether present, future, vested or contingent or which is otherwise of value;
- (b) any conveyance executed for conveying, assigning, appointing, surrendering or otherwise transferring or disposing of immovable property, of which the person executing the conveyance is proprietor, possessed or entitled to a contingent right, either for the whole interest or for any less interest;
- (c) securities;
- (d) any negotiable instrument, including any bank note, bearer note, Treasury bill, dividend warrant, bill of exchange, promissory note, cheque and negotiable certificate of deposit;
- (e) any mortgage or charge, whether legal or equitable, guarantee, lien or pledge, whether actual or constructive, letter of hypothecation or trust receipt, indemnity, undertaking or other means of securing payment or discharge of a debt or liability, whether present, future, vested or contingent; and
- (f) any other tangible or intangible property;

“securities account” means an account established by a central depository for a depositor for the recording of securities and for dealings in such securities by the depositor;

“security” includes a mortgage or charge, whether legal or equitable, debenture, bill of exchange, promissory note, guarantee, lien or pledge, whether actual or constructive,

hypothecation, indemnity, undertaking or other means of securing payment or discharge of a debt or liability, whether present, future, vested or contingent.

### **Application to court to facilitate agreement or arrangement for transfer of the whole or part of business of licensed person**

**139.** (1) Where in the case of—

- (a) a holder of a Capital Markets Services Licence who carries on the business of dealing in securities or trading in futures contracts, the Minister, on the recommendation of the Commission, has granted his approval; and
- (b) any other holder of a Capital Markets Services Licence, the Commission has granted its approval,

and in relation to an agreement or arrangement—

- (A) for the sale, disposal or transfer in any manner of the whole or any part of the business of such holder;
- (B) for the amalgamation or merger of such holder with any other person; or
- (C) for the reconstruction of such holder,

the holder whose business is to be transferred, hereinafter referred to as “the transferor”, and the entity to whom the transfer is to be made, hereinafter referred to as “the transferee”, may make a joint application to the court by way of *ex parte* originating summons for such order of the court as may be required by them to facilitate or enable the agreement or arrangement to be given effect to.

(2) In an application to the court under subsection (1), there may be sought all or any of the following orders:

- (a) specifying the date on and from which the agreement or arrangement shall take effect, being a date earlier or later than the date of the application (in this section referred to as “the transfer date”);
- (b) vesting any property held by the transferor, either alone or jointly with any other person, in the transferee either alone or, as the case may be, jointly with such person, on and from the transfer date, in the same capacity, upon the trusts, and with and subject to the powers, provisions and liabilities applicable to that matter respectively;
- (c) for any existing instrument, whether in the form of a deed, will or otherwise, or order of any court, under or by virtue of which any property became or will become vested in the transferor, to be construed and to have effect as if for any reference in that instrument to the transferor there were substituted a reference to the transferee;

- (d) for any existing agreement to which the transferor was a party to have effect as if the transferee had been a party to the agreement instead of the transferor;
- (e) for any securities account or other account maintained by or on behalf of a transferor for a client to become a securities account or other account maintained by or on behalf of the transferee for the client, subject to such conditions as are applicable between the transferor and its client;
- (f) for any securities account or other account maintained by or on behalf of the transferor as principal to become a securities account or other account maintained by or on behalf of the transferee as principal;
- (g) for any existing instruction, order, direction, mandate, power of attorney, authority, undertaking or consent, whether or not in relation to an account, given to the transferor, either alone or jointly with another person, to have effect, in respect of anything due to be done, as if given to the transferee either alone or, as the case may be, jointly with the other person;
- (h) for any monies received from commission, interest and other sources payable by any person to the transferor to be payable by the person to the transferee;
- (i) for any negotiable instrument or order for payment of monies drawn on or given to or accepted or endorsed by the transferor or payable at the place of business of the transferor, whether so drawn, given, accepted or endorsed before, on or after the transfer date, to have the same effect on and from the transfer date as if it had been drawn on, given to or accepted or endorsed by the transferee or were payable at the place of business of the transferee;
- (j) for the custody of any document or property held by the transferor as pledgee or custodian, as the case may be, immediately before the transfer date to pass to the transferee and the rights and obligations of the transferor under any pledge or custody agreement relating to any such document or property to be transferred to the transferee;
- (k) for any security held before the transfer date by the transferor or by a nominee of, or trustee for, the transferor, as security for the payment or discharge of any liability of any person, to be held by the transferee or, as the case may be, to be held by that nominee or trustee as the nominee of, or trustee for, the transferee, and to the extent of those liabilities be available to the transferee as security for the payment or discharge of those liabilities; and where any such security extends to future advances or future liabilities, to be held by, and to be available, as previously mentioned, to the transferee as security for future advances by, and future liabilities to, the transferee in the same manner in all respects as future advances by, or future liabilities to, the transferor were secured by such security immediately before the transfer date;

- (l) where any right or liability of the transferor is transferred to the transferee, for the transferee to have the same rights, powers and remedies, and in particular the same rights and powers as to taking or resisting legal proceedings or making or resisting applications to any authority, for ascertaining, protecting or enforcing that right or resisting that liability as if it had at all times been a right or liability of the transferee, including those rights or liabilities in respect of any legal proceedings or applications to any authority pending immediately before the transfer date by or against the transferor;
  - (m) for any judgment or award obtained by or against the transferor and not fully satisfied before the transfer date to be enforceable by or, as the case may be, against the transferee; or
  - (n) for all such other incidental, consequential and supplemental orders as are necessary to secure that the agreement or arrangement shall be fully and effectively carried out.
- (3) On the hearing of an application under subsection (2), the court may grant an order in the terms applied for, or with such modifications or variations as the court deems just or proper in the circumstances of the case.
- (4) Where the order of the court granted under subsection (3) provides for the transfer of any property or business vested in or held by the transferor, either alone or jointly with any other person, then, by virtue of the order, that property or business shall, on and from that transfer date, become vested in or held by the transferee either alone or, as the case may be, jointly with such other person, and the order shall have effect according to its terms notwithstanding anything in any written law or any rule of law, and shall be binding on any person affected, regardless that the person so affected is not a party to the proceedings under this section or any other related proceedings, or had no notice of the proceedings under this section or of other related proceedings.
- (5) The order of the court granted under subsection (3) shall, subject to the directions of the court, be published by the transferee in at least one national language national daily newspaper and one English language national daily newspaper as approved by the Commission.
- (6) The transferor shall, within thirty days from the date the order of the court was granted under subsection (3), lodge an authenticated copy of such order together with the agreement or arrangement approved by the Minister or the Commission, as the case may be, with—
  - (a) the Registrar of Companies; and
  - (b) the appropriate authority, if any, performing the functions of registering or recording dealings in any movable property transferred pursuant to the order.
- (7) Where an order of the court granted under subsection (3) vests any alienated land, or any share or interest in any alienated land, in the transferee—

- (a) the court shall, where such alienated land is in Peninsular Malaysia, including the Federal Territory of Putrajaya, pursuant to subsection 420(2) of the National Land Code 1965 [Act 56/1965], cause a copy of the order to be served on the Registrar of Titles or the Land Administrator immediately after the order is granted so that the Registrar of Titles or the Land Administrator can effect the provisions of subsections 420(2), (3) and (4) respectively;
  - (b) where such alienated land is in Sabah, the transferee shall, as soon as practicable after the order has been granted, present an authenticated copy of such order to the Registrar for the registration of the vesting of the alienated land or of the share or interest in alienated land as provided under subsection 114(2) of the Land Ordinance [*Sabah Cap. 68*];
  - (c) where such alienated land is in Sarawak, the transferee shall, as soon as practicable after the order has been granted, produce an authenticated copy of such order to the Registrar for the registration of the vesting of the alienated land or of the share or interest in alienated land in the transferee as provided under section 171 of the Sarawak Land Code [*Cap. 81*]; or
  - (d) where such alienated land is in the Federal Territory of Labuan, the transferee shall, as soon as practicable after the order has been granted, produce an authenticated copy of such order to the Registrar for the registration of the vesting of the alienated land or of the share or interest in alienated land as provided under subsection 114(2) of the Land Ordinance as modified by the Federal Territory of Labuan (Modification of Land Ordinance) Order 1984 [*P.U. (A) 291/1984*].
- (8) An order of the court granted under subsection (3) may relate to any property or business of the transferor outside Malaysia and, if it so relates, effect may be given to it either in accordance with any reciprocal arrangements relating to enforcement of judgments that may exist between Malaysia and the country, territory or place outside Malaysia where the property or business is or, where there are no such arrangements, in accordance with the law applicable in such country, territory or place.