

**PART IV**  
**COMPENSATION FUND AND FIDELITY FUND**  
**DIVISION 1**  
**Compensation Fund**

**Interpretation**

**140.** In this Part, unless the context otherwise requires—

“compensation fund” means a compensation fund established and maintained under section 141;

“fidelity fund” means a fidelity fund established under section 159;

“relevant futures exchange”, in relation to a fidelity fund, means the futures exchange which established the fidelity fund under section 159;

“relevant stock exchange”, in relation to a compensation fund, means the stock exchange which established the compensation fund under section 141.

**Establishment of compensation fund**

- 141.** (1) A relevant stock exchange shall establish and maintain a compensation fund which shall be administered under this Division.
- (2) The assets of the compensation fund shall be the property of the relevant stock exchange but the relevant stock exchange shall keep such assets separate from all its other property and shall hold such assets in trust for the purposes set out in the regulations made under this Act.
- (3) The Minister may by regulations prescribe—
- (a) in respect of a compensation fund of a relevant stock exchange—
    - (i) the powers of the Commission;
    - (ii) the powers, obligations and liabilities of the relevant stock exchange; and
    - (iii) the manner in which the compensation fund is to be administered;
  - (b) the manner in which the relevant stock exchange shall apply its compensation fund; and
  - (c) without prejudice to section 152, in respect of claims made against a compensation fund of a relevant stock exchange,—

- (i) the persons who are eligible to make claims;
- (ii) the circumstances under which claims are to be allowed;
- (iii) the procedures and limitations in respect of such claims; and
- (iv) appeals and the procedures applicable thereto.

### **Monies constituting compensation fund**

**142.** The compensation fund of a relevant stock exchange shall consist of the following:

- (a) monies paid to the credit of the compensation fund by the relevant stock exchange on the establishment of the compensation fund;
- (b) monies paid to the relevant stock exchange by participating organisations under this Division;
- (c) the interest and profits from time to time accruing from the investment of the compensation fund;
- (d) monies paid into the compensation fund by the relevant stock exchange under subsection 146(1);
- (e) monies recovered by or on behalf of the relevant stock exchange in the exercise of a right of action conferred by this Division;
- (f) monies paid by an insurer under a contract of insurance or indemnity entered into by the relevant stock exchange under section 156; and
- (g) all other monies lawfully paid into the compensation fund.

### **Compensation fund to be kept in separate account**

- 143.** (1) All monies forming part of the compensation fund of a relevant stock exchange shall, pending its application in accordance with this Division and the regulations made under this Act, be paid or transferred into a separate trust account by the relevant stock exchange.
- (2) A trust account referred to in subsection (1) may be opened at one or more licensed institutions.

### **Payments out of compensation fund**

**144.** Subject to this Division, there shall be paid out of the compensation fund of a relevant stock exchange in such order as the relevant stock exchange thinks proper—

- (a) the amount of all claims, including costs, allowed by the relevant stock exchange or established against the compensation fund under this Division;

- (b) all legal and other expenses incurred in investigating or defending claims made under this Division or incurred in relation to the compensation fund or in the exercise by the relevant stock exchange of the rights, powers and authority conferred by this Division in relation to the compensation fund;
- (c) all premiums payable in respect of contracts of insurance or indemnity entered into by the relevant stock exchange under section 156;
- (d) all expenses incurred in the administration of the compensation fund, including the remuneration and allowances of any persons employed by the relevant stock exchange in relation thereto; and
- (e) all other monies payable out of the compensation fund in accordance with the provisions of this Act.

### **Accounts of compensation fund**

- 145.** (1) A relevant stock exchange shall establish and keep proper accounts of the compensation fund and shall, before the thirty-first day of December in each year cause a balance sheet in respect of such accounts to be made out as at the preceding thirtieth day of June.
- (2) The relevant stock exchange shall appoint an auditor to audit the accounts of the compensation fund.
- (3) The auditor appointed by the relevant stock exchange shall regularly and fully audit the accounts of the compensation fund and shall audit each balance sheet and cause it to be laid before the relevant stock exchange not later than one month after the balance sheet was made out.

### **Requirement of relevant stock exchange to pay portion of net income into compensation fund**

- 146.** (1) The Commission may, after consultation with a relevant stock exchange and with the approval of the Minister, require the relevant stock exchange to pay a portion of the net income of the relevant stock exchange in any particular financial year into the compensation fund.
- (2) Where the Commission requires a relevant stock exchange to make a payment under subsection (1), the Commission shall give notice in writing to the relevant stock exchange and the relevant stock exchange shall comply with the requirement on or before the date specified in the written notice.

### **Contribution to compensation fund**

- 147.** (1) A participating organisation shall, upon being licensed under this Act, pay to the relevant stock exchange the amount of thirty thousand ringgit as a contribution to the compensation fund and shall thereafter on or before the thirty-first of December pay to the relevant stock exchange the amount of ten thousand ringgit as a contribution to the compensation fund.

- (2) All contributions made under this section shall not be refundable.
- (3) Notwithstanding anything in this section, the relevant stock exchange may, from time to time with the approval of the Commission, vary the amount and manner of contribution by participating organisations to the compensation fund.

### **Provision where compensation fund exceeds fifty million ringgit**

- 148.** (1) Where the amount at credit in a compensation fund exceeds fifty million ringgit, or such greater sum as the Commission may after consultation with the relevant stock exchange determine, every participating organisation of the relevant stock exchange who has made fifty annual contributions, or such greater number as the Commission may after consultation with the relevant stock exchange determine, to the compensation fund, and in respect of whom no payment from the compensation fund has been made or, if any such payment has been made, the compensation fund has been fully reimbursed, shall be freed and discharged from further annual contributions to the compensation fund.
- (2) If a compensation fund, for any reason, stands below the sum of ten million ringgit, or such other sum as the Commission may after consultation with the relevant stock exchange determine, the relevant stock exchange may, with the approval of the Commission, require a participating organisation of the relevant stock exchange who has been freed and discharged from the requirement to make annual contributions under subsection (1), to such extent as it thinks necessary, to pay annual contributions under section 147.

### **Levy in addition to annual contributions**

- 149.** (1) If at any time a compensation fund is not sufficient to satisfy the liabilities of the relevant stock exchange that are then ascertained in relation thereto, the relevant stock exchange may impose on every participating organisation liable to contribute to that compensation fund a levy of such amount as may be determined by the Minister to be appropriate as reasonable compensation against such liabilities, to be paid into the compensation fund.
- (2) The amount of such levy shall be paid within the time and in the manner specified by the relevant stock exchange either generally or in relation to any particular case.

### **Power of relevant stock exchange to make advances to compensation fund**

- 150.** (1) A relevant stock exchange may, from time to time from its general funds, give or advance on such terms as the board of the relevant stock exchange thinks fit, any sums of monies to its compensation fund.
- (2) Any monies advanced under subsection (1) may from time to time be repaid from the compensation fund to the general funds of the relevant stock exchange.

## Investment of monies in compensation fund

**151.** A relevant stock exchange may invest any monies which forms part of its compensation fund and is not immediately required for any other purpose under this Division—

- (a) on fixed deposit with a licensed institution; or
- (b) in securities in which trustees are authorised by law to invest trust funds.

## Application of compensation fund

**152.** (1) Subject to this Division, if a person (the “person suffering the loss”) suffers monetary loss at any particular time because of—

- (a) a defalcation, or because of fraudulent misuse of monies or other property, by a director, officer, employee or representative of a holder of a Capital Markets Services Licence who carries on the business of dealing in securities that is at that time a participating organisation; or
- (b) an insolvency of a participating organisation,

and the loss is suffered in respect of monies or other property that was, in connection with the participating organisation’s dealing in securities, entrusted to or received by the participating organisation, or by a director, officer, employee or representative of the participating organisation (whether before or after the commencement of this section) for or on behalf of the person suffering the loss or another person, or because the participating organisation was trustee of the monies or other property, the compensation fund of the relevant stock exchange shall be applied for the purpose of compensating the person suffering the loss.

(2) Without prejudice to subsection (1), the Minister may, on the recommendation of the Commission, after consultation with the relevant stock exchange, by order published in the *Gazette*, prescribe any other circumstances for the application of the compensation fund.

(3) The amount or the sum of the amounts paid out of the compensation fund of a relevant stock exchange under this Division for the purpose of—

- (a) compensating for monetary loss suffered by a person referred to in subsection (1) or (2), as the case may be; or
- (b) compensating for monetary loss suffered by such person in respect of a particular participating organisation,

shall not be greater than the amount stated in or calculated in accordance with this Division and the regulations made under this Act.

(4) A reference in this section to a defalcation, or to a fraudulent misuse of monies or other property, is a reference to such defalcation or fraudulent misuse wherever and whenever occurring.

- (5) For the purposes of subsection (1), a participating organisation shall be deemed to be insolvent–
- (a) when the participating organisation is being wound up; or
  - (b) where the relevant stock exchange determines, in accordance with its rules that the participating organisation appears to be unable, or likely to become unable, to meet its obligations in respect of all trades effected on the relevant stock exchange to which the participating organisation is a party.
- (6) If, in any particular case, after taking into account all ascertained or contingent liabilities of a compensation fund, the relevant stock exchange considers that the assets of the compensation fund so permit, the relevant stock exchange may apply out of the compensation fund such sum in excess of the total amount limited by or under this Division and the regulations made thereunder as the relevant stock exchange in its absolute discretion thinks fit in or towards the compensation of persons who have suffered monetary loss as provided in subsection (1) or (2), as the case may be.
- (7) For the purposes of this section, “director” includes a person who has been, but at the time of any defalcation or fraudulent misuse of monies or property in question has ceased to be, a director of a participating organisation if, at the time of the defalcation or fraudulent misuse of monies or property the person claiming compensation has reasonable grounds to believe that the person is a director of a participating organisation.

### **Power of relevant stock exchange to require production of documents**

- 153.** The relevant stock exchange may at any time and from time to time require any person to produce and deliver any documents or statements of evidence necessary to support any claim made or necessary for the purpose either of exercising its rights against a participating organisation or the directors thereof or any other person concerned or of enabling criminal proceedings to be taken against any person in respect of a defalcation, or fraudulent misuse of monies or property and in default of delivery of any such documents or statements of evidence by such first-mentioned person, the relevant stock exchange may disallow any claim by him under this Division.

### **Subrogation of relevant stock exchange to rights and remedies of claimant upon payment from compensation fund**

- 154.** If a relevant stock exchange makes a payment out of its compensation fund in respect of a claim from compensation under this Division–
- (a) the relevant stock exchange is subrogated to the extent of the payment to all the rights and remedies of the claimant in respect of the loss suffered by the claimant; and
  - (b) the claimant shall not have any claim or right under any bankruptcy or legal proceeding or otherwise–

- (i) to receive in respect of the loss any sum out of the assets of the participating organisation concerned; or
- (ii) if the loss was caused by an act or omission of a director, officer, representative or employee of a participating organisation to receive in respect of the loss any sum,

until the relevant stock exchange has been reimbursed the full amount of the payment made by it out of the compensation fund, including any interest paid.

### **Payment of claims only from compensation fund**

**155.** No monies or other property belonging to a relevant stock exchange, other than its compensation fund, shall be used for the payment of any claim under this Division.

### **Power of relevant stock exchange to enter into contract of insurance**

- 156.** (1) A relevant stock exchange may enter into a contract with a registered insurance business within Malaysia under which the relevant stock exchange will be insured or indemnified, to the extent and in the manner provided by the contract, against liability in respect of claims under this Division or any regulations made under this Act.
- (2) A contract under subsection (1) may be entered into in relation to participating organisations generally, or in relation to a particular participating organisation named in the contract, or in relation to participating organisations generally with the exclusion of particular participating organisations named in the contract.
- (3) An action shall not lie against a relevant stock exchange or against any member or employee or against any committee or subcommittee of a board of a relevant stock exchange, as the case may be, for injury alleged to have been suffered by any participating organisation by reason of the publication in good faith of a statement that any contract entered into under this section does or does not apply with respect to the participating organisation.

### **Application of insurance monies**

- 157.** A claimant against a compensation fund of a relevant stock exchange shall not have—
- (a) a right of action against a person with whom a contract of insurance or indemnity is made under this Division in respect of such a contract; or
  - (b) a right or claim with respect to any monies paid by the insurer in accordance with such a contract.

### **Monies in compensation fund upon winding up of relevant stock exchange**

**158.** In the event of a relevant stock exchange being wound up under the Companies Act 1965, the relevant stock exchange shall, after satisfying all the outstanding liabilities against its compensation fund, make available to the liquidator of the relevant stock exchange the balance of the amount available in the compensation fund which shall

form part of the assets of the relevant stock exchange and be available to the liquidator for distribution in accordance with the Companies Act 1965.

## **DIVISION 2**

### **Fidelity Fund**

#### **Establishment of fidelity fund**

- 159.** (1) A relevant futures exchange shall establish and maintain a fidelity fund which shall be administered under this Division.
- (2) The assets of the fidelity fund are the property of the relevant futures exchange, but the relevant futures exchange shall keep them separate from all its other property and is to hold them in trust for the purposes set out in the regulations.
- (3) The Minister may by regulations prescribe—
- (a) in respect of a fidelity fund of a relevant futures exchange—
    - (i) the powers of the Commission;
    - (ii) the powers, obligations and liabilities of the relevant futures exchange; and
    - (iii) the manner in which the fidelity fund is to be administered;
  - (b) the manner in which a relevant futures exchange shall apply its fidelity fund; and
  - (c) without prejudice to section 167, in respect of claims made against a fidelity fund of a relevant futures exchange—
    - (i) the persons who are eligible to make claims;
    - (ii) the circumstances under which claims are to be allowed;
    - (iii) the procedures and limitations in respect of such claims; and
    - (iv) appeals and the procedures applicable thereto.
- (4) The matters that may be prescribed under paragraph (3)(c) include the satisfaction of claims in relation to any trading or proposed trading in futures contracts made against affiliates of the relevant futures exchange.

#### **Monies constituting fidelity fund**

- 160.** The fidelity fund of a relevant futures exchange shall consist of the following:

- (a) monies paid to the credit of the fund by the relevant futures exchange on the establishment of the fund;
- (b) monies paid to the relevant futures exchange under this Division by holders of a Capital Markets Services Licence who carry on the business of trading in futures contracts;
- (c) the interest and profits from time to time accruing from the investment of the fidelity fund;
- (d) monies paid into the fidelity fund by the relevant futures exchange;
- (e) monies recovered by or on behalf of the relevant futures exchange in the exercise of a right of action conferred by this Division;
- (f) monies paid by an insurer under a contract of insurance or indemnity entered into by the relevant futures exchange under section 171; and
- (g) all other monies lawfully paid into the fidelity fund.

### **Fidelity fund to be kept in separate account**

- 161.** (1) All monies forming part of the fidelity fund of a relevant futures exchange shall, pending its application in accordance with this Division and the regulations made under this Act, be paid or transferred into a separate trust account by the relevant futures exchange.
- (2) A trust account referred to in subsection (1) may be opened at one or more licensed institutions.

### **Payments out of fidelity fund**

- 162.** Subject to this Division, there shall be paid out of the fidelity fund of a relevant futures exchange in such order as the relevant futures exchange thinks proper—
- (a) the amount of all claims, including costs, allowed by the relevant futures exchange or established against the fund under this Division;
  - (b) all legal and other expenses incurred in investigating or defending claims made under this Division or incurred in relation to the fund or in the exercise by the relevant futures exchange of the rights, powers and authority conferred by this Division in relation to the fidelity fund;
  - (c) all premiums payable in respect of contracts of insurance or indemnity entered into by the relevant futures exchange under section 171;
  - (d) all expenses incurred in the administration of the fund, including remuneration and allowances of the members of any committee established by the relevant futures exchange and of persons employed by the relevant futures exchange, in relation to the fidelity fund; and

- (e) all other monies payable out of the fidelity fund in accordance with the provisions of this Act.

### **Accounts of fidelity fund**

- 163.** (1) A relevant futures exchange shall establish and keep proper accounts of the fidelity fund and shall, before the thirty-first day of December in each year, cause a balance sheet in respect of such accounts to be made out as at the preceding thirtieth day of June.
- (2) The relevant futures exchange shall appoint an auditor to audit the accounts of the fidelity fund.
- (3) The auditor appointed by the relevant futures exchange shall regularly and fully audit the accounts of the fidelity fund and shall audit each balance sheet and cause it to be laid before the relevant futures exchange not later than one month after the balance sheet was made out.

### **Contributions to fidelity fund**

- 164.** (1) A holder of a Capital Markets Services Licence who carries on the business of trading in futures contracts shall, upon being licensed under this Act, pay to the relevant futures exchange the amount of thirty thousand ringgit as a contribution to the fidelity fund and shall thereafter on or before the thirty-first of December in each of the five years following the year in which he is licensed pay to the relevant futures exchange the amount of ten thousand ringgit as a contribution to the fidelity fund.
- (2) All contributions made under this section shall not be refundable.
- (3) Notwithstanding anything in this section, the relevant futures exchange may, from time to time with the approval of the Commission, vary the amount and the manner of the contribution to the fidelity fund by holders of a Capital Markets Services Licence who carry on the business of trading in futures contracts.

### **Power of relevant futures exchange to make advances to fidelity fund**

- 165.** (1) A relevant futures exchange may, from time to time from its general funds, give or advance on such terms as the relevant futures exchange thinks fit, any sum of monies to its fidelity fund.
- (2) Any monies advanced under subsection (1) may from time to time be repaid from the fidelity fund to the general funds of the relevant futures exchange.

### **Investment of monies in the fidelity fund**

- 166.** A relevant futures exchange may invest any monies which forms part of its fidelity fund and is not immediately required for any other purposes provided by this Division—
- (a) on fixed deposit with a licensed institution; or

- (b) in securities in which trustees are authorised by law to invest trust funds.

### **Application of fidelity fund**

**167.** (1) Subject to this Division, if–

- (a) a person (the “futures person”) suffers monetary loss at a particular time because of a defalcation, or because of fraudulent misuse of monies or other property, by 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 that is at that time an affiliate of a relevant futures exchange or in such other circumstances as may be prescribed under paragraph 159(3)(c); and
- (b) the loss is suffered in respect of monies or other property that was, in connection with the holder’s trading in futures contracts, entrusted to or received by the holder or by a director, officer or employee of the holder whether before or after the commencement of this section–
- (i) for or on behalf of the futures person or another person; or
- (ii) because the holder was trustee of the monies or other property,

the fidelity fund of the relevant futures exchange shall be applied for the purpose of compensating the futures person.

(2) The amount or the sum of the amounts paid under this Division out of a relevant futures exchange’s fidelity fund for the purpose of–

- (a) compensating for monetary loss suffered by a futures person; or
- (b) compensating for monetary loss suffered by any person or persons in respect of a particular holder of a Capital Markets Services Licence who carries on the business of trading in futures contracts,

must not be greater than the applicable amount stated in or calculated in accordance with the relevant futures exchange’s rules.

- (3) For the purposes of subsection (2), an amount that is paid from a fidelity fund is, to the extent to which that amount is repaid to the fund, to be disregarded.
- (4) A reference in this section to a defalcation, or to a fraudulent misuse of monies or other property, is a reference to a defalcation, or to such a fraudulent misuse, wherever and whenever occurring.

### **Power of relevant futures exchange to require production of documents and statements**

**168.** The relevant futures exchange may at any time and from time to time require any person

to produce and deliver any documents or statements of evidence necessary to support any claim made or necessary for the purpose of either–

- (a) exercising its rights against a holder of a Capital Markets Services Licence who carries on the business of trading in futures contracts or the directors thereof or any other person concerned; or
- (b) enabling criminal proceedings to be taken against any person in respect of a defalcation, or fraudulent misuse of monies or property,

and in default of delivery of any such documents or statements of evidence by such first-mentioned person, the relevant futures exchange may disallow any claim by him under this Division.

### **Subrogation of relevant futures exchange to rights and remedies of claimant upon payment from fidelity fund**

**169.** If a relevant futures exchange makes a payment out of its fidelity fund in respect of a claim for compensation under this Division–

- (a) the relevant futures exchange is subrogated to the extent of the payment to all the rights and remedies of the claimant in respect of the loss suffered by the claimant; and
- (b) the claimant shall not have any claim or right under any bankruptcy or legal proceeding or otherwise–
  - (i) to receive in respect of the loss any sum out of the assets of the holder of a Capital Markets Services Licence who carries on the business of trading in futures contracts; or
  - (ii) if the loss was caused by an act or omission of 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, to receive in respect of the loss any sum,

until the relevant futures exchange has been reimbursed the full amount of the payment made by it out of the fidelity fund, including any interest paid.

### **Payment of claims only from fidelity fund**

**170.** No monies or other property belonging to a relevant futures exchange, other than its fidelity fund, shall be used for the payment of any claim under this Division.

### **Power of relevant futures exchange to enter into contract of insurance**

**171.** (1) A relevant futures exchange may enter into a contract with a registered insurance business within Malaysia under which the relevant futures exchange will be insured or indemnified, to the extent and in the manner provided by the contract, against liability in respect of claims under this Division or any regulations made under this Act.

- (2) Such a contract may be entered into in relation to affiliates of the relevant futures exchange generally, or in relation to a particular affiliate named in the contract, or in relation to affiliates generally with the exclusion of particular affiliates named in the contract.
- (3) An action shall not lie against a relevant futures exchange or against any member or employee or against any committee or subcommittee of a board of a relevant futures exchange, as the case may be, for injury alleged to have been suffered by any affiliate by reason of the publication in good faith of a statement that any contract entered into under this section does or does not apply with respect to the affiliate.

### **Application of insurance monies**

- 172.** A claimant against a fidelity fund of a relevant futures exchange shall not have—
- (a) a right of action against a person with whom a contract of insurance or indemnity is made under this Division in respect of such a contract; or
  - (b) a right or claim with respect to any monies paid by the insurer in accordance with such a contract.

### **Monies in fidelity fund upon winding up of relevant futures exchange**

- 173.** In the event the relevant futures exchange being wound up under the Companies Act 1965, the relevant futures exchange shall, after satisfying all the outstanding liabilities against its fidelity fund, make available to the liquidator of the relevant futures exchange the balance of the amount available in the fidelity fund which shall form part of the assets of the relevant futures exchange and be available to the liquidator for distribution in accordance with the Companies Act 1965.