

PART VI
ISSUES OF SECURITIES AND TAKE-OVERS AND MERGERS

DIVISION 1

Proposals in Relation to Securities

Proposals to be submitted to Commission

212. (1) In this Division and Schedule 5, unless the context otherwise requires—

“an applicant” means any person referred to in subsection (2);

“expert” includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him;

“officer”, in relation to a corporation, includes—

- (a) a director, a secretary, an executive officer or an employee of the corporation;
- (b) a receiver and manager, appointed under a power contained in any instrument, of any part of the undertaking or property of the corporation;
and
- (c) a liquidator of the corporation appointed in a voluntary winding up of the corporation,

but does not include a receiver who is not also a manager, a receiver and manager appointed by a court and a liquidator appointed by a court;

“private company” and “public company” have the meanings assigned to them in subsection 4(1) of the Companies Act 1965;

“proposal” means a proposal referred to in subsection (2).

(2) This section applies to a person who proposes to do any of the following:

- (a) make available, offer for subscription or purchase, or issue an invitation to subscribe for or purchase securities in Malaysia;
- (b) make available, offer for subscription or purchase, or issue an invitation to subscribe for or purchase, outside Malaysia, securities of a public company, or to list such securities on a securities exchange outside Malaysia;
- (c) by way of issue of securities, effect—
 - (i) a compromise or arrangement whether or not for the purposes of or in connection with a scheme, compromise or arrangement for

the amalgamation of any two or more corporations or for reconstruction of any corporation; or

- (ii) an acquisition of securities or assets;
 - (d) apply for the listing of a corporation, or for the quotation of securities, on a stock market of a stock exchange;
 - (e) distribute the assets of a public company or a listed corporation to its members other than distribution in cash or distribution of assets to members of the public company or listed corporation on its winding up; or
 - (f) acquire or dispose assets (whether or not by way of issue of securities) which results in a significant change in the business direction or policy of a listed corporation.
- (3) An applicant shall submit to the Commission such documents and such other information in relation to the proposal in such form and manner and at such times as the Commission may require.
- (4) Subject to section 213, no person referred to in subsection (2) shall implement or carry out a proposal unless the Commission has approved the proposal under this section.
- (5) The Commission may–
- (a) approve a proposal subject to such terms and conditions as it thinks fit;
 - (b) approve a proposal with such revisions and subject to such terms and conditions as it thinks fit; or
 - (c) reject a proposal.
- (6) A person who contravenes any term or condition in relation to an approval given under paragraph (5)(a) or (b) commits an offence.
- (7) Where the Commission is satisfied that–
- (a) there is a contravention of subsection 214(1);
 - (b) there is a breach of any term or condition imposed under paragraph (5)(a) or (b); or
 - (c) there is any change or development in the circumstances relating to a proposal occurring subsequent to the Commission giving its approval under subsection (5), and if such change or development, if known to the Commission prior to the approval, would have affected its decision as regards the proposal,

the Commission may–

- (A) revoke an approval given under subsection (5);
- (B) revise an approval; or
- (C) impose such further terms or conditions in relation to a proposal approved by it under subsection (5):

Provided that the Commission may only revoke or revise such approval or impose such further terms and conditions where such revocation, revision or imposition shall not affect the rights of third parties that may have been created by or arising from the carrying out or implementation of a proposal in accordance with an approval given under subsection (5).

- (8) The Commission shall give a written notice to an applicant of its intention to take action under subsection (7) and shall give the applicant an opportunity to be heard prior to it taking any action under subsection (7).
- (9) Where the Commission has granted its approval to a proposal under subsection (5)–
 - (a) if registration of a prospectus is required under this Act in connection with the proposal, the prospectus shall include a statement that the Commission has approved the proposal pursuant to this section and that the Commission’s approval of the proposal shall not be taken to indicate that the Commission recommends the proposal; or
 - (b) if registration of a prospectus is not required under this Act in connection with the proposal, the applicant shall include in any document issued with respect to the proposal, in such form as the Commission may require, a statement that the Commission has approved the proposal pursuant to this section and that the Commission’s approval of the proposal shall not be taken to indicate that the Commission recommends the proposal.
- (10) Where–
 - (a) a person enters into an agreement in respect of a proposal; and
 - (b) the terms of the agreement are not binding until the fulfilment of any condition as may be set out in the agreement, including that of the approval to be given under subsection (5),

the person shall not be taken, for the purposes of subsection (4), to have taken any step to implement or carry out the proposal.

- (11) In respect of any proposal referred to in subsection (2)–
 - (a) the Commission may direct an applicant to make an announcement of a proposal in accordance with the rules of the stock exchange, if applicable; and

- (b) any person may make an announcement of a proposal before submitting such proposal to the Commission for its approval under this section.
- (12) For the purpose of subsection (11), an “announcement” includes any publication by press notice or in any other form of a firm intention to make an offer for any securities.
- (13) A person who contravenes subsection (3), (4), (9) or (11) 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.

Classes or categories of transactions or securities not subject to subsection 212(4)

- 213.** (1) Subsection 212(4) shall not apply to the following:
- (a) such classes or categories of securities or classes or categories of transactions as specified in Schedule 5;
 - (b) the making available, offering for subscription or purchase, or issuing an invitation to subscribe for or purchase securities as may be prescribed by the Minister on the basis of the manner or total value thereof or the characteristics, types or numbers of investors in relation thereto;
 - (c) such categories or classes of securities as may be prescribed by the Minister.
- (2) In making any prescription under subsection (1), the Minister shall have regard to the interests of the public.
- (3) Any prescription made under this section shall be subject to any condition, restriction or limitation as the Minister may impose.

False or misleading statements, etc.

- 214.** (1) Where any statement or information is required to be submitted to the Commission under this Division in relation to any proposal submitted pursuant to section 212–
- (a) an applicant, any of its officers or associates;
 - (b) a financial adviser or an expert; or
 - (c) any other person,
- shall not–
- (A) submit or cause to be submitted any statement or information that is false or misleading;
 - (B) submit or cause to be submitted any statement or information from which there is a material omission; or

- (C) engage in or aid or abet conduct that he knows to be misleading or deceptive or is likely to mislead or deceive the Commission.
- (2) It shall be a defence to a prosecution or any proceeding for a contravention of subsection (1) if it is proved that the defendant, after making enquiries as were reasonable in the circumstances, had reasonable grounds to believe, and did until the time of the making of the statement or provision of the information or engaging in the conduct was of the belief that—
- (a) the statement or information was true and not misleading;
 - (b) the omission was not material;
 - (c) there was no material omission; or
 - (d) the conduct in question was not misleading or deceptive.
- (3) Where—
- (a) a statement or information referred to in subsection (1) has been submitted or provided to the Commission, or a conduct referred to in subsection (1) has been engaged in; and
 - (b) a person referred to in that subsection becomes aware before the proposal has been fully implemented or carried out—
 - (i) that the statement or information may be false or misleading or materially incomplete; or
 - (ii) that the conduct may tend to mislead or deceive,
 the person shall forthwith advise the Commission of the facts referred to in subparagraph (b)(i) or (ii), where applicable, and shall take such action as the Commission may require pursuant to subsection 212(7).
- (4) For the purposes of paragraph (3)(b), a person who becomes aware includes a person who causes or does an act that causes such statement or information to become false or misleading or materially incomplete.
- (5) A person who contravenes subsection (1) or (3) 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.

Application monies to be paid into a trust account where no prospectus is required

- 215.** (1) Any monies received from applicants or such other persons who have provided consideration for shares pursuant to an issue, offer for subscription or purchase, or an invitation to subscribe for or purchase, shares in relation to a proposal that has been approved by the Commission under subsection 212(4) and for which

no prospectus is required shall be paid into a trust account established and kept in a licensed institution for such applicants or other persons until—

- (a) such shares have been issued or transferred to such applicants or other persons who has provided consideration for such shares; or
- (b) permission for the shares offered to be listed for quotation on the official list of a stock exchange or other similar exchange outside Malaysia has been granted,

whichever is the later.

- (2) Where such shares have not been issued or transferred to the persons referred to in subsection (1) or where the permission referred to in subsection (1) has not been granted, whichever is the later, the issuer shall forthwith repay without interest all monies referred to in subsection (1) and if any such monies are not repaid within fourteen days after the issuer becomes liable to repay it, in addition to the liability of the issuer, the officers of the issuer shall be jointly and severally liable to repay such monies with interest at the rate of ten per centum per annum or at such other rate as may be specified by the Commission from the expiration of that period.
- (3) Monies paid into a trust account under this section shall not be available for payment of the debts of the issuer, or be liable to be paid or taken in execution under an order or process of any court.
- (4) Any condition imposed by an issuer requiring or binding an applicant for any shares to waive compliance with this section or purporting to do so shall be void.
- (5) The Commission may specify such categories of shares that shall not be subject to this section.
- (6) A person who 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.

DIVISION 2

Take-overs, Mergers and Compulsory Acquisitions

Interpretation

216. (1) In this Division, unless the context otherwise requires—

“acquirer” means—

- (a) a person who acquires or proposes to acquire control in a company whether the acquisition is effected by the person or by an agent; or

- (b) two or more persons who, acting in concert with one another, acquire or propose to acquire control in a company, whether the acquisition is effected by the persons or by an agent;

“Code” means the Malaysian Code on Take-Overs and Mergers made in accordance with section 217;

“company”, in relation to a company being taken over, means a public company whether or not it is listed on any stock exchange and any other entity as may be prescribed in the Code;

“control”, means the acquisition or holding of, or entitlement to exercise or control the exercise of, voting shares or voting rights of thirty per centum or more, or such other amount as may be prescribed in the Code in a company;

“dissenting shareholder” includes any shareholder who has not accepted a take-over offer and any shareholder who has failed or refused to transfer shares to an acquirer in accordance with a take-over offer;

“expert” includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him;

“offeree” means a company whose voting shares or voting rights are subject to a take-over offer;

“offeror” means a person who makes or proposes to make a take-over offer;

“officer”, in relation to a corporation, includes—

- (a) a director, secretary, executive officer or employee of the corporation;
- (b) a receiver and manager, appointed under a power contained in any instrument, of any part of the undertaking or property of the corporation;
- (c) a liquidator of the corporation appointed in a voluntary winding up of the corporation,

but does not include a receiver who is not also a manager, a receiver and manager appointed by a court and a liquidator appointed by a court;

“private company” and “public company” have the meanings assigned to them in subsection 4(1) of the Companies Act 1965;

“related”, in relation to a corporation, means related within the meaning of section 6 of the Companies Act 1965;

“share” means a share in a company or a unit in an entity that is prescribed in the Code;

“shareholder” means a shareholder in a company or a unit holder in an entity that is prescribed in the Code;

“take-over offer”, in relation to a company, means an offer made to acquire all or part of the voting shares or voting rights, or any class or classes of voting shares or voting rights, in the company;

“voting shares”, in relation to a company, has the meaning assigned to it in subsection 4(1) of the Companies Act 1965.

- (2) For the purposes of this Division, a reference to “persons acting in concert” shall be construed as a reference to persons who, pursuant to an agreement, arrangement or understanding, co-operate to—
 - (a) acquire jointly or severally voting shares of a company for the purpose of obtaining control of that company; or
 - (b) act jointly or severally for the purpose of exercising control over a company.
- (3) Without prejudice to the generality of subsection (2), the following persons shall be presumed to be persons acting in concert unless the contrary is established:
 - (a) a corporation and its related and associate corporations;
 - (b) a corporation and any of its directors, or the parent, child, brother or sister of any of its directors, or the spouse of any such director or any such relative, or any related trusts;
 - (c) a corporation and any pension fund established by it;
 - (d) a person and any investment company, unit trust or other fund whose investments such person manages on a discretionary basis;
 - (e) a financial adviser and its client which is a corporation, where the financial adviser manages on a discretionary basis the corporation’s funds and has ten per centum or more of the voting shares in that corporation;
 - (f) a person who owns or controls twenty per centum or more of the voting shares of a corporation falling within paragraph (a) and any parent, child, brother or sister of such person, or the spouse of such person or any such relative, or any related trusts together with one or more persons falling within paragraph (a); and
 - (g) such other category of persons as may be prescribed in the Code.
- (4) For the purposes of subsection (2), an agreement, arrangement or understanding means an agreement, arrangement or understanding whether formal or informal, whether written or oral, whether express or implied or whether or not having legal or equitable force.
- (5) For the purposes of paragraph (3)(a), an associated corporation means a corporation in respect of which not less than twenty per centum of the voting shares of that corporation are held by another corporation, the first-mentioned corporation thereby being an associate corporation of the other corporation.

Malaysian Code on Take-Overs and Mergers

- 217.** (1) The Minister may, on the recommendation of the Commission, prescribe a Code which shall be published in the *Gazette*.
- (2) The Minister may, from time to time, on the recommendation of the Commission, amend any of the provisions of the Code and any amendment thereto shall be published in the *Gazette*.
- (3) The Code shall contain principles and rules governing the conduct of all persons or parties involved in a take-over offer, merger or compulsory acquisition, including an acquirer, offeror, offeree and their officers and associates.
- (4) The Commission shall administer the Code according to the objectives specified in subsection (5) and may do all such things as may be necessary or expedient to give full effect to the provisions of this Division and the Code and without limiting the generality of the foregoing, may–
- (a) issue rulings from time to time, interpreting the Code;
 - (b) issue rulings on the practice and conduct of persons involved in or affected by any take-over offer, merger or compulsory acquisition, or in the course of any take-over, merger or compulsory acquisition; and
 - (c) enquire into any matter relating to any take-over offer, merger or compulsory acquisition whether potential or otherwise, and for this purpose, may issue public statements as the Commission thinks fit with respect thereto.
- (5) In making any recommendation under subsections (1) and (2), and in administering the Code and exercising its powers under this Act, the Commission shall take into account the desirability of ensuring that the acquisition of voting shares or control of companies takes place in an efficient, competitive and informed market and, without limiting the generality of the foregoing, shall have regard to the need to ensure–
- (a) that the shareholders and directors of an offeree and the market for the shares that are the subject of the take-over offer–
 - (i) are aware of the identity of the acquirer and offeror;
 - (ii) have reasonable time in which to consider a take-over offer; and
 - (iii) are supplied with sufficient information necessary to enable them to assess the merits of any take-over offer;
 - (b) that, so far as practicable, all shareholders of an offeree have equal opportunities to participate in benefits accruing from the take-over offer, including in the premium payable for control;

- (c) that fair and equal treatment of all shareholders, in particular, minority shareholders, in relation to the take-over offer, merger or compulsory acquisition would be achieved; and
- (d) in its response to, or making recommendations with respect to any take-over offer, merger or compulsory acquisition, the directors of the offeree and acquirer shall act in good faith to observe the objects, and the manner in which they observe the objects, specified in this subsection, and that minority shareholders are not subject to oppression or disadvantaged by the treatment and conduct of the directors of the offeree or the acquirer.

Compliance with Code and rulings

- 218.** (1) A person who makes a take-over offer shall do so in accordance with the provisions of the Code and any ruling made under subsection 217(4).
- (2) Subject to section 219, an acquirer who has obtained control in a company shall make a take-over offer, other than in respect of voting shares of the company or voting rights which at the date of the offer are already held by the acquirer or which the acquirer is entitled to exercise, in accordance with the provisions of the Code and any ruling made under subsection 217(4).
- (3) Subject to section 219, an acquirer who has obtained control shall not acquire any additional voting shares in that company or voting rights, as the case may be, except in accordance with the provisions of the Code and any ruling made under subsection 217(4).
- (4) A person who contravenes subsection (1), (2) or (3) 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.

Exemptions

- 219.** (1) Subject to subsection 217(5), the Commission may grant exemption in writing to any particular person or take-over offer or to any particular class, category or description of persons or take-over offers from the provisions of this Division, the Code and any ruling made under subsection 217(4).
- (2) Any exemption granted under subsection (1) may be subject to any conditions, restrictions or limitations as may be imposed by the Commission.

Action by Commission in cases of non-compliance with Code and rulings

- 220.** (1) Notwithstanding the provisions of subsection 218(4), where any person who is under an obligation to comply with, observe or give effect to the provisions of this Division or the Code, or any ruling made under subsection 217(4), contravenes or fails to comply with, observe or give effect to any such provision or ruling, the Commission may take one or more of the following actions:
- (a) direct the person in breach to comply with, observe or give effect to any such provision of the Code or rulings;

- (b) impose a penalty, in proportion to the severity or gravity of the breach on the person in breach, but in any event not exceeding one million ringgit;
 - (c) reprimand the person in breach;
 - (d) direct a stock exchange to deprive the person in breach access to the facilities of the stock exchange;
 - (e) where the person in breach is a listed corporation, direct the stock exchange–
 - (i) to suspend trading in the securities of the corporation;
 - (ii) to suspend the listing of the corporation; or
 - (iii) to remove from the official list the corporation or the class of securities of the corporation;
 - (f) where the person in breach is a corporation that is not listed, direct any stock exchange to prohibit the listing of any of its securities;
 - (g) direct a stock exchange to prohibit the person in breach from engaging in transactions to be executed through the use of the facilities of the stock exchange; or
 - (h) require the person in breach to take such steps as the Commission may direct to remedy the breach or mitigate the effect of such breach, including making restitution to any other person aggrieved by such breach.
- (2) The Commission shall give a written notice to a person in breach of its intention to take action under subsection (1) and shall give the person in breach an opportunity to be heard prior to it taking any action under subsection (1).
 - (3) The court may, in a case where the Commission gives a direction under paragraph (1)(a) or (h), on an application by the Commission, make an order directing the person in breach to comply with, observe or give effect to those provisions of the Code or rulings.
 - (4) For the purposes of paragraph (1)(h), in determining whether or not restitution is to be made by a person in breach, the Commission shall have regard to–
 - (a) the profits that have accrued to such person in breach; or
 - (b) whether one or more persons have suffered loss or been otherwise adversely affected as a result of the breach.
 - (5) Where a person has failed to comply with a penalty imposed by the Commission under paragraph (1)(b), the penalty imposed by the Commission may be sued for and recovered as a civil debt due to the Government of Malaysia.
 - (6) Without prejudice to any other remedy, where a direction under paragraph (1)(h)

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

- (7) To the extent that any of the amount obtained under paragraph (1)(h) or subsection (6) has not been distributed due to the difficulty of ascertaining or notifying the aggrieved persons, such amount shall be paid to—
- (a) the compensation fund maintained under Part IV; or
 - (b) retained by the Commission to defray the costs of regulating the capital market, as the Commission, with the approval of the Minister, may determine.
- (8) Nothing in this section shall preclude the Commission from taking any of the actions that it is empowered to take under this Act or any of the provisions of the securities laws against the person in breach.
- (9) For the purposes of this section—

“breach” means a failure to comply with, observe or give effect to the provisions of this Part or the Code or any ruling made under subsection 217(4), in circumstances where there is an obligation to do so;

“person in breach” means a person who contravenes or fails to comply with, observe or give effect to the provisions of this Part or the Code or any ruling made under subsection 217(4), in circumstances where the person is under an obligation to do so.

False or misleading documents, information, etc.

- 221.** (1) Where any document or information is required to be submitted to the Commission under this Division or the Code in relation to a take-over offer, merger or compulsory acquisition—
- (a) an acquirer, an offeror or a person making a compulsory acquisition or effecting a merger, its officers or associates;
 - (b) an offeree, its officers or associates;
 - (c) a financial adviser or an expert; or
 - (d) any other person,

shall not—

- (A) submit or cause to be submitted any document or information that is false or misleading;

- (B) provide or cause to be provided any document or information from which there is material omission; or
 - (C) engage in conduct that he knows to be misleading or deceptive or is likely to mislead or deceive.
- (2) It shall be a defence to a prosecution or any proceeding for a contravention of subsection (1) if it is proved that the defendant, after making enquiries as were reasonable in the circumstances, had reasonable grounds to believe, and did until the time of the provision of the document or information or engaging in the conduct was of the belief that–
- (a) the document or information was true and not misleading;
 - (b) the omission was not material;
 - (c) there was no material omission; or
 - (d) the conduct in question was not misleading or deceptive.
- (3) A person who contravenes subsection (1) 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.

Compulsory acquisition

- 222.** (1) Subject to section 224, where a take-over offer by an offeror to acquire all the shares or all the shares in any particular class in an offeree has, within four months after the making of the take-over offer, been accepted by the holders of not less than nine-tenths in the nominal value of those shares or of the shares of that class (including shares already held at the date of the take-over offer by the offeror or persons acting in concert), the offeror may, at any time within two months from the date the nine-tenths in the nominal value of those shares have been achieved, give notice in the manner prescribed under the Code to any dissenting shareholder that it desires to acquire his shares together with a copy of a statutory declaration by the offeror that the conditions for the giving of the notice are satisfied.
- (2) Where an offeror has given notice to any dissenting shareholder that it desires to acquire his shares pursuant to subsection (1), the dissenting shareholder shall be entitled to require the offeror, by a demand in writing served on the offeror within one month from the date on which the notice is given, to supply him with a statement in writing of the names and addresses of all other dissenting shareholders as shown in the register of members and the offeror shall not be entitled or bound to acquire the shares of the dissenting shareholders until fourteen days after the posting of the statement of those names and addresses to the dissenting shareholder.
- (3) Upon the giving of the notice and statutory declaration under subsection (1), or where subsection (2) applies, upon the provisions in subsection (2) being complied

with, the offeror shall in accordance with subsection (7) acquire those shares on the terms of the take-over offer or, if the take-over offer contained two or more alternative sets of terms, on the terms which were specified in the take-over offer as being applicable to the dissenting shareholders.

- (4) A person commits an offence if he—
- (a) sends a copy of a notice or statutory declaration under subsection (1) which is not in the prescribed manner; or
 - (b) makes a statutory declaration pursuant to subsection (1) or sends a statement pursuant to subsection (2), knowing that the declaration or the statement, as the case may be, to be false, or without having reasonable grounds for believing it to be true.
- (5) Where a person is charged for an offence under subsection (4), it is a defence for him to prove that he took reasonable steps for securing compliance with that subsection.
- (6) Where, during the period within which a take-over offer can be accepted, the offeror acquires or contracts to acquire any of the shares to which the take-over offer relates, otherwise than by virtue of acceptances of the take-over offer, then if—
- (a) the value of the consideration for which they are acquired or contracted to be acquired (“the acquisition consideration”) does not at that time exceed the value of the consideration specified in the terms of the take-over offer; or
 - (b) the terms of the take-over offer are subsequently revised so that when the revision is announced the value of the acquisition consideration at the time mentioned in paragraph (a) no longer exceeds the value of the consideration specified in those terms,

the offeror shall be treated, for the purposes of this section, as having acquired or contracted to acquire those shares by virtue of acceptances of the take-over offer but in relation to any other case those shares shall be treated as excluded from those to which the take-over offer relates.

- (7) Subject to section 224, where a notice has been given by the offeror under subsection (1), the offeror shall, after the expiration of one month after the date on which the notice has been given, or where subsection (2) applies after fourteen days from the date the statement has been posted to the dissenting shareholder—
- (a) send a copy of the notice to the offeree together with an instrument of transfer executed on behalf of all such dissenting shareholders by the offeror; and
 - (b) pay, allot or transfer to the offeree the amount or other consideration for the shares to which the notice relates,

and the offeree shall thereupon register the offeror as the holder of those shares.

- (8) Any sums received by the offeree under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that offeree in trust for the persons entitled to the shares in respect of which the sum or other consideration was received.
- (9) Where any consideration other than cash is held in trust by a company for any person under this section, it may, after the expiration of ten years from the date on which the consideration is paid, allotted or transferred to it, transfer the same to the Minister.
- (10) The Minister shall sell or dispose of any consideration received under subsection (9) in such manner as he thinks fit and shall deal with the proceeds of the sale or disposal as if it were monies paid to him pursuant to the law relating to unclaimed monies.

Right of minority shareholder

223. (1) Subject to section 224, if a take-over offer relates to all the shares or to all shares in any class in an offeree and, at any time before the end of the period within which the take-over offer can be accepted—

- (a) the offeror has, by virtue of the acceptances of the take-over offer, acquired some (but not all) of the shares to which the take-over offer relates or shares of any class to which the take-over offer relates; and
- (b) those shares, with or without any other shares or any other shares of that class to which the take-over offer relates, as the case may be, which the offeror or persons acting in concert has acquired amounts to not less than nine-tenths in value of all the shares in the offeree or of that class in the offeree,

the holder of any shares or any class of shares to which the take-over offer relates may, by notice to the offeror, require him to acquire those shares, and the offeror shall be bound to acquire those shares on the terms of the take-over offer or such other terms as may be agreed.

- (2) Within one month of the time specified in subsection (1), the offeror shall give any shareholder who has not accepted the take-over offer, notice in the manner prescribed under the Code of the rights that are exercisable by him under subsection (1) and, if the notice is given before the period mentioned in subsection (1), it shall state that the take-over offer is still open for acceptance.
- (3) A notice under subsection (2) may specify the period for the exercise of the rights conferred by this section and in that event the rights shall not be exercisable after the end of that period; but no such period shall end less than three months after the end of the period within which the take-over offer can be accepted.
- (4) Subsection (2) shall not apply if the offeror has given the shareholder a notice in respect of the shares in question under subsection 222(1).

- (5) A person who contravenes subsection (2) commits an offence.

Application to court

- 224.** (1) Where a notice is given under subsection 222(1), the court may, on an application made by any dissenting shareholder within one month from the date on which the notice was given—
- (a) order that the offeror shall not be entitled and shall not be bound to acquire those shares; or
 - (b) specify terms of acquisition that are different from the terms of the take-over offer.
- (2) If an application to court is pending at the end of the period mentioned in subsection 222(2), that subsection shall not have effect until the application has been disposed of.
- (3) When the holder of any shares exercises his rights under subsection 223(1), the court may, on an application made by such holder of shares or the offeror, order that the terms on which the offeror shall acquire the shares shall be as the court thinks fit.
- (4) No order for costs shall be made against a shareholder making an application under subsection (1) or (3) unless the court considers that—
- (a) the application was unnecessary, improper or vexatious; or
 - (b) there has been unreasonable delay in making the application or unreasonable conduct on the part of the shareholder in conducting the proceeding on the application.
- (5) Subject to subsection (6), the court may, on an application made by an offeror who has not obtained acceptances to the extent necessary for entitling him to give notice under subsection 222(1), make an order authorising the offeror to give notices under subsection 222(1).
- (6) The court may only grant an order under subsection (5) upon being satisfied that—
- (a) the failure of the offeror to obtain such acceptances was due to the inability of the offeror to trace one or more of the persons holding shares to which the take-over offer relates after having made reasonable enquiries;
 - (b) the shares which the offeror has acquired or contracted to acquire by virtue of acceptances of the take-over offer, together with the shares held by the person mentioned in paragraph (a), amount to not less than the minimum specified in subsection 222(1); and
 - (c) the consideration offered is fair and reasonable:

Provided that the court shall not make such an order unless it considers that it is just and equitable to do so having regard, in particular, to the number of shareholders who have been traced but who have not accepted the take-over offer.

Non-application of section 180 of the Companies Act 1965

- 225.** The provisions of section 180 of the Companies Act 1965 shall not apply in respect of take-over offers to which subsection 222(1) applies.

DIVISION 3

Prospectus

Interpretation

- 226.** In this Division, Divisions 4 and 5, unless the context otherwise requires—

“approved company auditor” means a person approved by the Minister under subsection 8(2) of the Companies Act 1965 as a company auditor and whose approval has not been revoked;

“excluded invitation” or “excluded offer” means an invitation or offer which is specified in Schedule 6 or which is prescribed by the Minister to be an excluded invitation or excluded offer under paragraph 229(1)(b);

“excluded issue” means an issue which is specified in Schedule 7 or which is prescribed by the Minister to be an excluded issue under paragraph 230(1)(b);

“preliminary prospectus” means any document which is designed to assist an issuer in setting a price in respect of a proposed issue of, an offer for subscription or purchase of, or an invitation to subscribe for or purchase, securities or to determine the final contents of a prospectus;

“promoter” means—

- (a) in relation to a prospectus issued by or in connection with a corporation, a promoter of the corporation;
- (b) in relation to a prospectus in respect of a unit trust scheme or prescribed investment scheme, a promoter of the scheme; or
- (c) in relation to a prospectus in any other case, a person,

who is a party to the preparation of the prospectus or any relevant portion thereof, but does not include any person by reason only of his acting in a professional capacity;

“prospectus” means a notice, circular, advertisement or document inviting applications or offers to subscribe for or purchase securities, or offering any securities for subscription

or purchase and, unless expressly specified, includes a supplementary prospectus, replacement prospectus, shelf prospectus, short form prospectus, profile statement, supplementary shelf prospectus and abridged prospectus;

“shelf prospectus” means a prospectus issued under a shelf registration scheme;

“shelf registration scheme” means a scheme applicable for the purpose of any issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities by an issuer based on a shelf prospectus and a supplementary shelf prospectus;

“supplementary shelf prospectus” means a document which provides material information necessary to update the information in a shelf prospectus subsequent to the registration of such shelf prospectus.

Invitation

227. In this Part, a reference to an invitation includes a reference to an invitation to make an offer or application.

Offer for subscription or purchase

228. For the purposes of this Division and Division 5, the expression “offer for subscription or purchase” or “making an invitation to subscribe for or purchase”, in relation to units of a unit trust scheme or prescribed investment scheme, as the case may be, shall include the making available of such units.

Excluded offers and invitations

229. (1) An offer for subscription or purchase of, or an invitation to subscribe for or purchase, securities is an excluded offer or an excluded invitation if—

(a) the offer or invitation is specified in Schedule 6; or

(b) the offer or invitation is made to a person or a class of persons, or made in respect of securities or a class of securities, as the Minister may, on the recommendation of the Commission, prescribe by order published in the *Gazette*,

to be an excluded offer or an excluded invitation.

(2) Schedule 6 or a prescription made under paragraph (1)(b) may specify the provisions of this Act that shall not apply to an excluded offer or an excluded invitation.

(3) An information memorandum issued by a person or his agent purporting to describe the business and affairs of the person in respect of—

(a) any excluded offer or excluded invitation specified in Schedule 6; or

(b) any offer or invitation made to a person or a class of persons or any offer or invitation in relation to securities or a class of securities prescribed under paragraph (1)(b),

shall be deemed to be a prospectus insofar as it relates to the liability of the person or his agent for any statement or information that is false or misleading or from which there is a material omission.

- (4) A person issuing the information memorandum referred to in subsection (3) shall deposit a copy of the information memorandum with the Commission within seven days after it is first issued.
- (5) Paragraph 17 of Schedule 6 shall not apply to any securities or class of securities of any private company or class of private companies as the Minister may, on the recommendation of the Commission, prescribe by order published in the *Gazette*.

Excluded issues

- 230.** (1) An issue of securities is an excluded issue if—
- (a) the issue is so specified in Schedule 7; or
 - (b) the issue is made to a person or a class of persons, or made in respect of securities or a class of securities, as the Minister may, on the recommendation of the Commission, prescribe by order published in the *Gazette*.
- (2) Schedule 7 or a prescription made under paragraph (1)(b) may specify the provisions of this Act that shall not apply to an excluded issue.
- (3) An information memorandum issued by a person or his agent purporting to describe the business and affairs of the person in respect of—
- (a) any excluded issue specified in Schedule 7; or
 - (b) any issue of securities made to a person or a class of persons or in relation to securities or a class of securities prescribed under paragraph (1)(b),
- shall be deemed to be a prospectus insofar as it relates to the liability of the person or his agent for any statement or information that is false or misleading or from which there is a material omission.
- (4) A person issuing the information memorandum referred to in subsection (3) shall deposit a copy of the information memorandum with the Commission within seven days after it is first issued.
 - (5) Paragraph 17 of Schedule 7 shall not apply to any securities or class of securities of any private company or class of private companies as the Minister may, on the recommendation of the Commission, prescribe by order published in the *Gazette*.

Exceptions

- 231.** (1) The provisions of this Division as specified in Schedule 6 or 7 or as may be prescribed by the Minister pursuant to paragraph 229(1)(b) or 230(1)(b) shall not apply to—

- (a) an excluded offer;
 - (b) an excluded invitation; or
 - (c) an excluded issue.
- (2) The provisions of this Part shall not apply to the making available of, the offer for subscription or purchase of, or an invitation to subscribe for or purchase, shares or debentures of any unlisted recreational club.

Requirement to register prospectus in relation to securities

- 232.** (1) A person shall not issue, offer for subscription or purchase, make an invitation to subscribe for or purchase or in the case of an initial listing of securities, make an application for the quotation of the securities on a stock market of a stock exchange unless—
- (a) a prospectus in relation to the securities has been registered by the Commission under section 233; and
 - (b) the prospectus complies with the requirements or provisions of this Act.
- (2) Unless authorised in writing by the Commission, a person shall not issue, circulate or distribute any form of application for securities unless the form is accompanied by a copy of a prospectus which has been registered by the Commission under section 233.
- (3) A person shall not issue, circulate or distribute any form of application for securities of a corporation that has not been formed or of a unit trust scheme or prescribed investment scheme that has not been formed.
- (4) The Commission may for public information publish the registrable prospectus submitted to the Commission before the registration of the prospectus under section 233.
- (5) The publication under subsection (4) shall not indicate that the Commission recommends the securities or assumes responsibility for the correctness of any statements made or opinions or reports expressed in the registrable prospectus.
- (6) For the purposes of this section, a “registrable prospectus” refers to a prospectus that has been submitted under section 233 and which has yet to be registered by the Commission.
- (7) A person who contravenes subsection (1), (2) or (3) 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.

Registration of prospectus

- 233.** (1) The Commission shall refuse to register a prospectus if—

- (a) the Commission is of the opinion that the prospectus does not comply with any provision of this Act;
 - (b) the issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities to which the prospectus relates does not comply with any other requirement or provision of this Act;
 - (c) the Commission is of the opinion that the prospectus contains any statement or information that is false or misleading or that the prospectus contains any statement or information from which there is a material omission;
 - (d) the issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities to which the prospectus relates–
 - (i) requires the approval of the Commission under section 212 and such approval has not been given; or
 - (ii) does not comply with any term or condition imposed under subsection 212(5);
 - (e) in relation to a unit trust scheme or prescribed investment scheme, there has been a failure to comply with any term or condition in relation to an approval of a management company or trustee; or
 - (f) the Commission is of the opinion that the issuer has contravened any provision of the securities laws or the Companies Act 1965 and that such contravention would cast a doubt as to whether the issuer is a fit and proper person to make an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, any securities.
- (2) No prospectus shall be registered unless it is submitted to the Commission together with–
- (a) a written application for its registration;
 - (b) copies of all consents required under subsection 244(1) from any person named in the prospectus as having made a statement that is included in the prospectus or on which a statement made in the prospectus is based;
 - (c) copies of all material contracts referred to in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof, verified in accordance with any requirements specified by the Commission; and
 - (d) all such information or documents as may be required by the Commission.
- (3) An issuer shall cause a copy of–
- (a) any consent required under subsection 244(1) in relation to the issue of the prospectus; and

(b) every material contract or document referred to in the prospectus,

to be deposited–

(A) at the registered office of the issuer in Malaysia, and if it has no registered office in Malaysia, at the address specified in the prospectus for that purpose; and

(B) in the case of a unit trust scheme or prescribed investment scheme, at the registered office of the issuer and the trustee in Malaysia, at the address specified in the prospectus for that purpose,

within three days after the registration of the prospectus and shall keep each such copy, for such period as may be specified by the Commission, for inspection by any person without charge.

Requirement to lodge prospectus with Registrar

234. An issuer shall cause a copy of the prospectus registered by the Commission under this Act and a copy of the form of application accompanying such prospectus–

(a) in relation to securities other than a unit trust scheme or prescribed investment scheme, to be lodged with the Registrar;

(b) in relation to a unit trust scheme or prescribed investment scheme, to be lodged with the Commission,

before the date of issue of the prospectus.

Contents of prospectus

235. (1) Without prejudice to section 236, a prospectus–

(a) shall be dated and that date shall, unless the contrary is proved, be taken as the date of issue of the prospectus;

(b) shall state that–

(i) the prospectus has been registered by the Commission;

(ii) in respect of securities other than a unit trust scheme or prescribed investment scheme, a copy of the prospectus is lodged with the Registrar and in respect of a unit trust scheme or prescribed investment scheme, a copy of the prospectus is lodged with the Commission; and

(iii) the registration of the prospectus shall not be taken to indicate that the Commission recommends the securities or assumes responsibility for the correctness of any statements made or opinions or reports expressed in the prospectus;

- (c) shall contain a statement that no securities will be allotted or issued on the basis of the prospectus later than such period as the Commission may specify from the date of issue of the prospectus;
 - (d) shall, if it contains any statement made by an expert or contains what purports to be a copy of or an extract from a report, memorandum or valuation of an expert, state the date on which the statement, report, memorandum or valuation was made and whether or not it was prepared by the expert for incorporation in the prospectus;
 - (e) shall not contain the name of any person named in the prospectus as having made a statement—
 - (i) that is included in the prospectus; or
 - (ii) on which a statement made in the prospectus is based,unless the requirements of subsection 244(1) are satisfied; and
 - (f) shall set out such information, matters or reports as may be specified by the Commission.
- (2) A condition requiring or binding an applicant for securities to waive compliance with any requirement of this section or section 236, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.
- (3) Notwithstanding the provisions of this Division, the Commission may, either on the written application of any person referred to in section 232 or of its own accord, make an order relieving such person from or approving any variation of the requirements of this Act relating to the form and content of a prospectus.
- (4) In making an order under subsection (3), the Commission may impose such terms and conditions as it thinks fit.
- (5) The Commission shall not make an order under subsection (3) unless it is satisfied that—
- (a) compliance with the requirements of this Act is unnecessary for the protection of persons who may normally be expected to deal in those securities, being persons who would reasonably be expected to understand the risks involved; or
 - (b) compliance with the requirements of this Act would impose an unreasonable burden on the issuer.
- (6) A prospectus shall be deemed to have complied with all the requirements of this Act relating to the form and content of a prospectus if it is issued in compliance with an order made under subsection (3).

- (7) Where a prospectus relating to any securities is issued and the prospectus does not comply with the requirements of this section, the issuer and each director of the issuer at the time of the issue of the prospectus 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.
- (8) A person who contravenes any term or condition as may be imposed by the Commission under subsection (4) commits an offence.

General duty of disclosure in prospectus

- 236.** (1) For the purpose of determining whether a prospectus contains any statement or information which is false or misleading or from which there is a material omission under subsection 246(1) or 248(1), regard shall be had to whether the prospectus contains all such information that investors and their professional advisers would reasonably require, and reasonably expect to find in the prospectus, for the purpose of making an informed assessment of—
- (a) the assets and liabilities, financial position, profits and losses and prospects of the issuer and, in the case of a unit trust scheme or prescribed investment scheme, of the scheme;
 - (b) the rights attaching to the securities; and
 - (c) the merits of investing in the securities and the extent of the risk involved in doing so.
- (2) The information that investors and their professional advisers would reasonably require and reasonably expect to find in the prospectus under subsection (1) is information—
- (a) which is known to all or any of the following persons:
 - (i) a person who was a director of the issuer at the time of issue of the prospectus;
 - (ii) a person who has consented or caused himself to be named and is named in the prospectus as a director or as having agreed to become a director, either immediately or after an interval of time;
 - (iii) a promoter;
 - (iv) the principal adviser in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities;
 - (v) a person named in the prospectus, with his consent, as having made a statement that is included in the prospectus or on which a statement made in the prospectus is based;
 - (vi) a person named in the prospectus, with his consent, as a stockbroker,

sharebroker or underwriter, as the case may be, in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities;

- (vii) a person named in the prospectus, with his consent, as an auditor, banker or advocate in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities;
 - (viii) a person named in the prospectus, with his consent, as having performed or performing any function in a professional, advisory or other capacity not mentioned in paragraph (iv), (v), (vi) or (vii) in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities; or
- (b) which any of the persons referred to in paragraph (2)(a) would have been able to obtain by making such enquiries as were reasonable in the circumstances.
- (3) Without prejudice to the generality of subsection (1) or (2), in determining the information that is required to be included in a prospectus under this section, regard shall be had to—
- (a) the nature of—
 - (i) the securities;
 - (ii) the business of the issuer of the securities; and
 - (iii) the unit trust scheme or prescribed investment scheme;
 - (b) the persons likely to consider acquiring such securities;
 - (c) the fact that certain matters may reasonably be expected to be known to any professional adviser whom investors referred to in subsection 236(1) may reasonably be expected to consult; and
 - (d) whether the persons to whom an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities is to be made are the holders of securities in the corporation, or unit holders in the unit trust scheme or prescribed investment scheme, and if they are, to what extent (if any) relevant information has previously been given to them by the issuer under any law or any requirement of the rules of a stock exchange, if applicable, or otherwise.

Abridged prospectus for renounceable rights issues

- 237.** (1) A corporation shall not issue, offer for subscription or purchase, or make an invitation to subscribe for or purchase, securities by means of a rights issue which is renounceable in favour of persons other than existing members or debenture holders of that corporation and in respect of which an application has been or

will be made for permission to deal with or quote such securities on a stock market of a stock exchange unless an abridged prospectus is registered by the Commission.

- (2) Any abridged prospectus registered pursuant to subsection (1) shall contain such particulars or information as may be specified by the Commission.
- (3) Nothing in this section shall be construed as preventing a full prospectus from being registered containing the particulars specified by the Commission in respect of full prospectuses in respect of an issue, offer or invitation referred to in subsection (1).

Supplementary or replacement prospectus

238. (1) This section applies–

- (a) in the case of a unit trust scheme or prescribed investment scheme, where a prospectus has been registered; or
- (b) in any other case, where a prospectus has been registered but before the issue of securities,

and where the issuer becomes aware that–

- (A) a matter has arisen and information in respect of that matter would have been required by–
 - (i) section 235 or 236;
 - (ii) any requirement under this Act;
 - (iii) any guidelines issued by the Commission; or
 - (iv) any listing requirement of a stock exchange,
to be disclosed in the prospectus if the matter had arisen at the time the prospectus was prepared;
- (B) there has been a significant change affecting a matter disclosed in the prospectus;
- (C) the prospectus contains a material statement or information that is false or misleading; or
- (D) the prospectus contains a statement or information from which there is a material omission.

- (2) As soon as practicable after becoming aware of a matter referred to in subsection (1), the issuer shall submit a supplementary or replacement prospectus, as the case may be, to the Commission for registration.

- (3) The issuer shall lodge the supplementary or replacement prospectus, as the case may be—
 - (a) in relation to securities other than a unit trust scheme or prescribed investment scheme, with the Registrar immediately upon registration by the Commission; and
 - (b) in relation to a unit trust scheme or prescribed investment scheme, with the Commission immediately upon registration by the Commission.
- (4) Subsection (1) shall apply with respect to matters contained in a supplementary or replacement prospectus, as the case may be, previously registered under this section in respect of the securities in question.
- (5) On each page of a supplementary prospectus, there shall be a clear statement in bold type that states that the document is a supplementary prospectus that is to be read in conjunction with the original prospectus and if other supplementary prospectuses have been issued in relation to the original prospectus, both the original prospectus and the supplementary prospectuses.
- (6) At the beginning of the replacement prospectus, there shall be a clear statement in bold type that states the document is a replacement prospectus, and identifies the prospectus which it replaces.
- (7) A supplementary prospectus shall be regarded as being part of the prospectus to which it relates and the provisions of this Act and any other law relating to liability in respect of statements in and omissions from prospectuses or otherwise relating to prospectuses shall apply to such supplementary prospectus and shall have effect accordingly.
- (8) A replacement prospectus shall be regarded as replacing the prospectus previously registered under section 233.
- (9) Where a supplementary prospectus has been registered by the Commission, every copy of the original prospectus issued after registration of the supplementary prospectus must be accompanied by a copy of the supplementary prospectus.
- (10) Notwithstanding the provisions of this section, the Commission may, on the written application of any issuer or of its own accord, make an order relieving such person from, or approving any variation of, the requirements of this section.
- (11) In making an order under this section, the Commission may impose such terms and conditions as it thinks fit.
- (12) The Commission shall not make an order under subsection (10) unless it is satisfied that—
 - (a) compliance with the requirements of this Act is unnecessary for the protection of persons who may normally be expected to deal in those securities, being persons who would reasonably be expected to understand the risks involved; or

- (b) compliance with the requirements of this Act would impose an unreasonable burden on the issuer.
- (13) A person who contravenes subsection (2), (3), (5), (6) or (9) 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.
- (14) A person who contravenes any term or condition as may be imposed by the Commission under subsection (11) commits an offence.

Consequences of registering a supplementary or replacement prospectus

239. (1) This section applies–

- (a) where a person (“the applicant”) applies for the issue of, subscription or purchase of, any securities pursuant to a prospectus and–
 - (i) in the case of a unit trust scheme or prescribed investment scheme, before the issue of units or transfer of units from the management company or the trustee to the applicant; or
 - (ii) in any other case, before the issue of securities; and
 - (b) the issuer delivers to the Commission for registration a supplementary or replacement prospectus, as the case may be, that relates to the prospectus.
- (2) As soon as practicable after the registration of the supplementary or replacement prospectus, as the case may be, by the Commission, the issuer shall–
- (a) give to the applicant a written notice or such other notice as may be specified by the Commission–
 - (i) advising the applicant that a supplementary or replacement prospectus, as the case may be, has been registered by the Commission;
 - (ii) giving the applicant not less than fourteen days from the date of receipt of the notice an opportunity to withdraw his application; and
 - (b) ensure that the written notice referred to in paragraph (2)(a) is accompanied by a copy of a supplementary or replacement prospectus, as the case may be.
- (3) If the applicant withdraws his application pursuant to subparagraph (2)(a)(ii), the issuer shall immediately pay to the applicant any monies that the applicant has paid to the issuer on account of the application.
- (4) Notwithstanding the provisions of this section, the Commission may, on the written application of any issuer or of its own accord, make an order relieving such person from, or approving any variation of, the requirements of this section.

- (5) In making an order under this section, the Commission may impose such terms and conditions as it thinks fit.
- (6) The Commission shall not make an order under subsection (4) unless it is satisfied that–
 - (a) compliance with the requirements of this Act is unnecessary for the protection of persons who may normally be expected to deal in those securities, being persons who would reasonably be expected to understand the risks involved; or
 - (b) compliance with the requirements of this Act would impose an unreasonable burden on the issuer.
- (7) A person who contravenes subsection (2) or (3) 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.
- (8) A person who contravenes any term or condition as may be imposed by the Commission under subsection (5) commits an offence.

Regulations for shelf prospectuses, supplementary shelf prospectuses, short form prospectuses, profile statements, etc.

- 240.** (1) Notwithstanding the provisions of sections 235 and 236, a person may issue, offer for subscription or purchase, or make an invitation to subscribe for or purchase, securities where at the time of the issue, offer or invitation there is in force–
- (a) a shelf prospectus as updated by a supplementary shelf prospectus;
 - (b) a short form prospectus; or
 - (c) a profile statement,
- relating to all matters which the Commission, with the approval of the Minister, may provide by way of regulations made under this Act with respect to a shelf prospectus, supplementary shelf prospectus, short form prospectus or profile statement, as the case may be.
- (2) The regulations referred to under subsection (1) may provide for, but shall not be limited to, the following matters:
- (a) a shelf prospectus, including a supplementary shelf prospectus;
 - (b) a short form prospectus;
 - (c) a profile statement;
 - (d) the period during which a person may be permitted to issue, offer for subscription or purchase, or make an invitation to subscribe for or purchase,

securities on the basis of a shelf prospectus, as updated by a supplementary shelf prospectus, short form prospectus or profile statement, as the case may be;

- (e) the form and content of a prospectus referred to in paragraph (a), (b) or (c);
 - (f) the persons or classes of persons to which any prospectus referred to in paragraph (a), (b) or (c) may apply; or
 - (g) the securities or classes of securities to which any prospectus referred to in paragraph (a), (b) or (c) may apply.
- (3) Where the Commission makes regulations under subsection (1) with respect to a shelf prospectus, supplementary shelf prospectus, short form prospectus or profile statement, the provisions of this Act and any other law relating to liability in respect of statements in or omissions from prospectuses or otherwise relating to prospectuses shall apply to the shelf prospectus, supplementary shelf prospectus, short form prospectus or profile statement, as the case may be, and shall have effect accordingly.

Restrictions in advertising

- 241.** (1) A person shall not publish a notice that—
- (a) issues, offers for subscription or purchase, or makes invitations to subscribe for or purchase, securities; or
 - (b) refers, whether directly or indirectly, to—
 - (i) a prospectus in respect of securities of a corporation;
 - (ii) in the case of a unit trust scheme or prescribed investment scheme, a prospectus in respect of any unit of the unit trust scheme or prescribed investment scheme, as the case may be;
 - (iii) an issue, intended issue, offer, intended offer, invitation or intended invitation in respect of securities; or
 - (iv) another notice that refers to a prospectus in relation to an issue, intended issue, offer, intended offer, invitation or intended invitation in respect of securities.
- (2) Subsection (1) shall apply to such notices mentioned therein which are issued in relation to the securities of a corporation that has not been formed or of a unit trust scheme or prescribed investment scheme that has not been formed.
- (3) Subsection (1) shall not apply to—
- (a) such notices referred to in subsection (4) or (5);

- (b) such preliminary prospectuses referred to in subsection (6);
 - (c) such reports referred to in subsection (7);
 - (d) such notices or reports as may be specified by the Commission; or
 - (e) such publication of a registrable prospectus referred to in section 232.
- (4) Subsection (1) shall not apply to a notice that is issued or published before the registration of a prospectus—
- (a) with the consent of the Commission and subject to such terms and conditions as it may impose; and
 - (b) which does not contain any information or matter other than the following:
 - (i) the name of the issuer of securities;
 - (ii) in the case of a unit trust scheme or prescribed investment scheme, the name of the unit trust scheme or the prescribed investment scheme, and the names of the trustee and the management company in relation to the unit trust scheme or prescribed investment scheme, as the case may be;
 - (iii) a concise statement of the general nature of the main business or undertaking or proposed main business or undertaking of the issuer;
 - (iv) the names, addresses and, where appropriate, occupations of the directors or proposed directors;
 - (v) the names and addresses of stockbrokers, sharebrokers, underwriters and principal adviser in relation to the proposed issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities;
 - (vi) in the case of debentures, the name and address of the trustee for debenture holders;
 - (vii) a brief description of the listing status of the corporation, unit trust scheme or prescribed investment scheme on any stock exchange or other similar exchange outside Malaysia, or a statement that it is intended to apply for permission to list the corporation, unit trust scheme or prescribed investment scheme on any stock exchange or other similar exchange outside Malaysia but no assurance has been given that the corporation, unit trust scheme or prescribed investment scheme, as the case may be, will be listed;
 - (viii) the fact that a prospectus is in the course of preparation and that an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities is proposed, together with a

brief indication of the nature and number of securities and of the possible timing of the issue of the prospectus;

- (ix) in the case of a unit trust scheme or prescribed investment scheme, a description of the persons from whom the units are available for purchase or subscription; and
 - (x) such other information or matters which the Commission may specify in writing.
- (5) Subsection (1) shall not apply to a notice that is issued or published after the registration of a prospectus that–
- (a) states that a prospectus in relation to any securities has been registered;
 - (b) specifies the date of the prospectus;
 - (c) specifies where a copy of the prospectus can be obtained;
 - (d) states that any issue of securities to which the prospectus relates will only be made on receipt of a form of application referred to in and accompanying a copy of the prospectus; and
 - (e) states such other information or matters which the Commission may specify in writing.
- (6) Subsection (1) shall not apply to a preliminary prospectus where the following requirements are met:
- (a) a copy of the preliminary prospectus is delivered to the Commission prior to its issue;
 - (b) the preliminary prospectus is issued to any person referred to in paragraph (1), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (22), (23), (24), (25), (26) or (27) of Schedule 6 or to any other person or class or category of persons or in respect of any securities or class or category of securities which the Commission allows in writing;
 - (c) the preliminary prospectus contains on its front page a conspicuous notice that–
 - (i) it is not a prospectus;
 - (ii) no issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities to which the preliminary prospectus relates is to be made; and
 - (iii) no agreement to subscribe for securities to which the preliminary prospectus relates will be entered into between the issuer and the recipient of the preliminary prospectus;

- (d) the preliminary prospectus is not to contain, have attached to it or be accompanied by any form of application which would facilitate the issue of, the offer for subscription or purchase of, or the making of an invitation to subscribe for or purchase, securities to which the preliminary prospectus relates or the acceptance of such an issue, offer or invitation;
- (e) a person to whom a copy of the preliminary prospectus is issued shall not circulate the copy to any other person;
- (f) securities are only to be issued on the basis of a prospectus duly registered by the Commission under this Act; and
- (g) where a prospectus which is registered in relation to securities to which the preliminary prospectus relates differs from the preliminary prospectus in a material respect, notice of such difference shall be given to the recipients of the preliminary prospectus and a copy of such notice shall be delivered to the Commission:

Provided that the Commission may, either of its own accord or on a written application by an issuer, make an order approving any variation of the requirements of this subsection.

- (7) Subsection (1) shall not apply to the issuing or publishing of all or any of the following reports:
 - (a) a report that relates to the affairs of a corporation, unit trust scheme or a prescribed investment scheme, that is listed on a stock exchange which is or has been published only to that stock exchange by or on behalf of the corporation, unit trust scheme or prescribed investment scheme, as the case may be;
 - (b) a report of the whole or part of the proceedings at a general meeting of a body corporate or at a meeting of unit holders of a unit trust scheme or a prescribed investment scheme where the body corporate, unit trust scheme or prescribed investment scheme is included in the official list of a stock exchange and the report does not contain any matter other than the matters laid before the meeting;
 - (c) a report which is a news report or is a genuine comment, published by a person in a newspaper or periodical or by broadcasting or televising, relating to—
 - (i) a prospectus that has been registered or information that is contained in such a prospectus; or
 - (ii) a report referred to in paragraph (a) or (b),

if none of the following persons receives or is entitled to receive any consideration or other benefit from a person who has an interest in the

success of the issue of securities to which the report or comment relates as an inducement to publish, or as the result of the publication of the report or comment:

- (A) the person making the report or comment;
 - (B) an agent or employee of the person making the report or comment;
 - (C) where the report or comment is published in a newspaper or periodical, the publisher of the newspaper or periodical; or
 - (D) where the report or comment is published by broadcasting or televising, the licensee of the broadcasting or television station by which it is published.
- (8) A notice that is issued or published under subsection (4) or (5), a preliminary prospectus that is issued under subsection (6) or a report that is issued or published under subsection (7) shall not constitute a prospectus.
- (9) Nothing in this section shall limit or diminish the liability that a person may incur under any other law.
- (10) Where it appears to the Commission that a notice, preliminary prospectus or report referred to in this section—
- (a) contravenes subsection (1);
 - (b) contains a statement or information that is false or misleading;
 - (c) contains a statement or information from which there is a material omission; or
 - (d) contains a material misrepresentation,
- the Commission may by order in writing served on the person who publishes or issues the notice, preliminary prospectus or report—
- (A) direct the person to cease issuing or publishing the notice, preliminary prospectus or report; or
 - (B) direct the person to take such other action as may be specified in the order.
- (11) In this section, “notice” includes any notice published in a document, newspaper or periodical or on any medium or in any manner capable of suggesting words and ideas.
- (12) A person who—
- (a) issues or publishes a notice in contravention of subsection (1), (4) or (5);
 - (b) issues a preliminary prospectus in contravention of subsection (6); or

(c) issues or publishes a report in contravention of subsection (7),

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.

Document containing offer of securities for purchase deemed to be a prospectus

- 242.** (1) Subject to subsection (3), where an issuer allots or issues or agrees to allot or issue to any person any securities with a view to all or any of them being offered for purchase—
- (a) any document by which the offer for purchase is made shall, for all purposes, be deemed to be a prospectus issued by the issuer; and
 - (b) all laws regulating the contents of prospectuses and providing for liability in respect of statements in and omissions from prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly as if persons accepting the offer in respect of any securities were subscribers therefor.
- (2) Nothing in subsection (1) shall prejudice the liability of the persons by whom the offer for purchase is made in respect of statements in, or omissions from, the document by which the offer for purchase is made or otherwise.
- (3) Subsection (1) shall not apply in relation to an offer for purchase or an invitation to purchase securities if the offer or invitation is made in the ordinary course of trading on a stock market of a stock exchange.
- (4) For the purposes of this Act, it shall unless the contrary is proved, be evidence that an allotment or issue of, or an agreement to allot or issue, any securities was made with a view to the securities being offered for purchase if it is shown that—
- (a) an offer of the securities for purchase was made within such period as may be specified by the Commission under paragraph 235(1)(c) after the allotment or issue or agreement to allot or issue; or
 - (b) at the date when the offer was made, the whole consideration to be received by the issuer in respect of the securities had not been so received.
- (5) The requirements of this Division as to prospectuses shall have effect as though the persons making an offer to which this section relates were persons named in a prospectus as directors of an issuer.
- (6) In addition to complying with the other requirements of this Division, the document by which the offer for purchase is made shall state—
- (a) the net amount of the consideration received or to be received by the issuer in respect of the securities to which the offer relates; and

- (b) the place and time at which a copy of the contract under which the securities have been or are to be allotted or issued may be inspected.
- (7) Where an offer to which this section relates is made by a corporation or a firm, the document by which the offer for purchase is made shall—
 - (a) in the case of a corporation, be signed on behalf of the corporation by two directors of the corporation; and
 - (b) in the case of a firm, be signed by not less than half of the members of the firm,and any such director or member may authorise his agent in writing to sign on his behalf.
- (8) For the purpose of this section, an invitation to make an offer to purchase securities shall be deemed to constitute an offer of the securities for purchase, and a person who makes an offer pursuant to such an invitation shall be deemed to be a person who accepted an offer of the securities for purchase.
- (9) The provisions of this section shall not apply to an offer for purchase which is an excluded offer, excluded invitation or excluded issue.

Allotment of securities where prospectus implies that application for permission to list on stock exchange had been made

- 243.** (1) Where a prospectus states or implies that an application has been or will be made for permission for the securities offered to be listed for quotation on the official list of a stock exchange or other similar exchange outside Malaysia, any allotment made on an application to subscribe for securities in pursuance of the prospectus shall, subject to subsection (3), whenever made, be void if—
- (a) the permission is not applied for in the form for the time being required by the stock exchange before the third day on which the exchange is open after the date of issue of the prospectus; or
 - (b) the permission is not granted before the expiration of six weeks from the date of issue of the prospectus or such longer period as may be specified by the Commission, provided that the applicant is notified by or on behalf of the exchange within that six weeks or such longer period as may be specified by the Commission.
- (2) Where permission has not been applied for, or has not been granted by the exchange referred to in subsection (1), an issuer shall, subject to subsection (3), forthwith repay without interest all monies received from applicants in pursuance of the prospectus, and if any such money is not repaid within fourteen days after the issuer so becomes liable to repay it, then, in addition to the liability of the issuer, the officers of the issuer shall be jointly and severally liable to repay such money with interest at the rate of ten per centum per annum or at such other rate as may be prescribed by the Commission from the expiration of that period.

- (3) Where in relation to any securities—
- (a) permission is not applied for as specified in paragraph(1)(a); or
 - (b) permission is not granted as specified in paragraph(1)(b),
- the Commission may, on the application of the issuer, by order published in the *Gazette*, before the securities are purported to be allotted, exempt the allotment of securities from the operation of subsection (1) or (2).
- (4) An officer of the issuer shall not be so liable under subsection (2) if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.
- (5) Any condition requiring or binding an applicant for any securities to waive compliance with this section or purporting to do so shall be void.
- (6) Without limiting the application of any of its provisions, this section shall have effect—
- (a) in relation to any securities agreed to be taken by a person underwriting an issue, offer or invitation referred to in a prospectus, as if he had applied for the securities in relation to the issue, offer or invitation referred to in the prospectus; and
 - (b) in relation to a prospectus offering securities for purchase, as if—
 - (i) a reference to purchase were substituted for a reference to allotment;
 - (ii) the persons by whom the offer is made, and not the issuer, were liable under subsection (2) to repay monies received from applicants, and references to the issuer's liability under that subsection were construed accordingly; and
 - (iii) a reference in subsection (7) to the issuer and every officer of the issuer who is in default under subsection (2) were substituted with a reference to any person by or through whom the issue, offer or invitation is made and who knowingly authorises or permits the default.
- (7) All monies received from the applicants shall be kept in trust in a separate bank account so long as the issuer may become liable to repay it under subsection (2), and if default is made in complying with this subsection, the issuer and every officer of the issuer who is in default commits an offence under this Act.
- (8) Where the exchange referred to in subsection (1) has within the time specified in paragraph (1)(b) granted permission, subject to compliance with any requirements specified by the exchange, permission shall be deemed to have been granted by the exchange if the directors of an issuer have given the exchange an undertaking in writing to comply with the requirements of the exchange, but if any such

undertaking is not complied with, each director of the issuer or the management company who is in default commits an offence.

- (9) A person shall not issue a prospectus in relation to any securities if it includes—
- (a) any false or misleading statement that permission has been granted for those securities to be dealt in or listed on an exchange referred to in subsection (1); or
 - (b) any statement in any way referring to any such permission or to any application or intended application for any such permission, or to dealing in or quoting or listing the securities on any exchange referred to in subsection (1), or to any requirements of the exchange unless that statement is or is to the effect that permission has been granted or that application has been or will be made to the exchange within three days of the issue of the prospectus or within such longer period as may be specified by the Commission or the statement has been approved by the Commission for inclusion in the prospectus.
- (10) Where a prospectus contains a statement to the effect that the constituent documents of the issuer or the deed as defined under section 287 complies with, or has been drawn so as to comply with, the requirements of any exchange referred to in subsection (1), the prospectus shall, unless the contrary intention appears from the prospectus, be deemed for the purposes of this section to imply that application has been made, or will be made, for permission for the securities offered by the prospectus to be listed for quotation on the stock exchange.
- (11) In this section, “officer”, in relation to an issuer means a director, a secretary or an executive officer of the issuer.
- (12) A person who 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.

Consent from person to issue of prospectus containing statement by him

- 244.** (1) A prospectus that includes a statement, other than a statement which is an extract of an official statement or any other statement as may be specified by the Commission, purporting to be made by any person or to be based on a statement made by such person shall not be issued unless—
- (a) the person has given his written consent to the issue of the prospectus with the statement made in the form and context in which it is included and has not, before the date of issue of the prospectus, withdrawn such consent; and
 - (b) there appears in the prospectus a statement that the person has given and has not withdrawn his consent.
- (2) Every person who knowingly is a party to the issue of any prospectus in contravention of subsection (1) commits an offence.

Stop order

- 245.** (1) Where in the opinion of the Commission—
- (a) a prospectus does not comply with or is not prepared in accordance with any provision of this Act;
 - (b) a prospectus contains a statement or information that is false or misleading;
 - (c) a prospectus contains a statement or information from which there is a material omission; or
 - (d) an issuer has contravened any provision of the securities laws or the Companies Act 1965,
- the Commission may, by order in writing served on the issuer or such other person as the Commission may determine, direct the issuer or such other person not to allot, issue, offer, make an invitation to subscribe for or purchase or sell, further securities to which the prospectus relates, as the case requires.
- (2) Subject to subsections (3) and (4), the Commission shall not make an order under subsection (1) unless the Commission has given a reasonable opportunity to be heard to any affected person as to whether such an order should be made.
 - (3) If the Commission considers that any delay in making an order under subsection (1) by giving an opportunity to be heard would be prejudicial to the public interest, the Commission may make an interim order without giving the opportunity to be heard.
 - (4) An interim order under subsection (3) shall, unless sooner revoked, have effect until the end of twenty-one days after the day on which it is made or the conclusion of the hearing in subsection (2), whichever date is the later.
 - (5) While an order made under subsection (1) or an interim order made under subsection (3) is in force, this Division shall apply as if the prospectus had not been registered.
 - (6) An interim order made under subsection (3) may, by further order in writing made by the Commission, be revoked if the Commission becomes satisfied that the circumstances that resulted in the making of the order no longer exists.
 - (7) Without prejudice to the provisions of section 215, where applications to subscribe for or purchase securities to which the prospectus relates have been made prior to the order made under subsection (1)—
 - (a) where the securities have not been issued to the applicants, the applications shall be deemed to have been withdrawn and cancelled and the issuer or such other person who receives the monies, shall, forthwith repay without interest all monies received from the applicants and if any such money is not repaid within fourteen days of the stop order, the issuer shall be liable

to repay such monies with interest at the rate of ten per centum per annum or at such other rate as may be specified by the Commission from the expiration of that period; or

- (b) where the securities have been issued to the applicants, the issue of securities shall be deemed to be void and the issuer or such other person shall—
 - (i) forthwith repay without interest all monies received from the applicants and if any such money is not repaid within fourteen days of the date of service of the stop order, the issuer shall be liable to repay such monies with interest at the rate of ten per centum per annum or at such other rate as may be specified by the Commission from the expiration of that period; and
 - (ii) take necessary steps to effect the order.
- (8) Notwithstanding subsections (1) and (2), the Commission shall not serve a stop order if any of the shares or debentures or units of shares or debentures to which the prospectus relates have been listed on a stock market of a stock exchange and trading in them has commenced.
- (9) A person who contravenes an order made under subsection (1) or an interim order made under subsection (3) commits an offence.

Criminal liability for false statements, etc., in prospectus

- 246.** (1) No person shall authorise or cause the issue of a prospectus which contains—
- (a) any statement or information that is false or misleading; or
 - (b) any statement or information from which there is a material omission.
- (2) For the purposes of this Division, a statement shall be deemed to be in a prospectus if it is—
- (a) contained in a report or memorandum that appears on the face of the prospectus; or
 - (b) contained in a report or memorandum that is issued with the prospectus with the consent or knowledge of a person who authorised or caused the issue of the prospectus.
- (3) A person who contravenes subsection (1) 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.

Persons not to be taken to have authorised or caused issue of prospectus

- 247.** (1) For the purposes of this Division, neither the Commission nor the Registrar shall

be taken to have authorised or caused the issue, or to be involved in the preparation, of a prospectus for any reason including where there has been the performance or purported performance of any function, or the exercise or purported exercise of any power, by the Commission under the securities laws or the Registrar under the Companies Act 1965 respectively.

- (2) For the purpose of section 246, a person shall not be deemed to have authorised or caused the issue of a prospectus by reason only of his having given a consent as required under subsection 244(1).

Right to recover for loss or damage resulting from false or misleading statement in prospectus, etc.

- 248.** (1) A person who acquires, subscribes for or purchases securities and suffers loss or damage as a result of any statement or information contained in a prospectus that is false or misleading, or any statement or information contained in a prospectus from which there is a material omission, may recover the amount of loss or damage from all or any of the persons set out in paragraphs (a), (b), (c), (d), (e) and (f) and to the extent provided for—
- (a) the issuer and each director of the issuer at the time of the issue of the prospectus, for any loss or damage;
 - (b) a person who consented or caused himself to be named and is named in the prospectus as a director or as having agreed to become a director, either immediately or after an interval of time, for any loss or damage;
 - (c) a promoter, for any loss or damage arising from the prospectus or any relevant portion of the prospectus in respect of which he was a party to the preparation thereof;
 - (d) a principal adviser, for any loss or damage;
 - (e) a person named in the prospectus with his consent as having made a statement that is included in the prospectus or on which a statement made in the prospectus is based, for any loss or damage caused by the inclusion of the statement in the prospectus;
 - (f) a person named in the prospectus with his consent as a stockbroker, sharebroker, underwriter, auditor, banker or advocate of the issuer in relation to the issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities, and who has made a statement that is included in the prospectus or on which a statement made in the prospectus is based, for any loss or damage caused by the inclusion of the statement in the prospectus; or
 - (g) a person who authorised or caused the issue of a prospectus in contravention of section 246, for any loss or damage caused by such contravention.

- (2) For the purposes of paragraphs (1)(a) and (b), a director referred to therein shall include any person by whom the issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities is made.
- (3) For the purpose of paragraph (1)(f), an underwriter shall not include a subunderwriter.

Civil liability for misleading or deceptive acts

- 249.** (1) A person shall not act in a manner that is misleading or deceptive or is likely to mislead or deceive in connection with—
- (a) any prospectus issued;
 - (b) the allotment of, issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities;
 - (c) any notice referred to in subsection 241(4) or (5) or a preliminary prospectus referred to in subsection 241(6), or any report referred to in subsection 241(7) or any notice or report as may be specified by the Commission under paragraph 241(3)(d); or
 - (d) the carrying on of negotiations, the making of any arrangements or the doing of any other act preparatory to or in any other way related to any matter referred to in paragraph (a), (b) or (c).
- (2) A person who contravenes this section shall not be guilty of an offence but a person who acquires, subscribes for or purchases securities and suffers loss or damage as a result of any act referred to in paragraph (1)(a), (b), (c) or (d) may recover the amount of the loss or damage under section 357.

Due diligence defence

- 250.** A person shall not be guilty of an offence under section 246 and is not liable under section 248 if he proves that—
- (a) he had made all enquiries as were reasonable in the circumstances; and
 - (b) after making such enquiries, he had reasonable grounds to believe and did believe until the time of the making of the statement or provision of the information that—
 - (i) the statement or information was true and not misleading; or
 - (ii) there was no material omission.

Reliance on statement and information in respect of false or misleading statement

- 251.** A person shall not be guilty of an offence under section 246 and is not liable under

section 248 if the person (hereinafter referred to as the “first-mentioned person”) proves that the false or misleading statement or material omission from a statement in a prospectus—

- (a) is or is based on a statement made by a person referred to in subsection 244(1) (hereinafter referred to as the “second-mentioned person”); or
- (b) is contained in a copy of or what purports to be a copy of, or an extract from, a report or valuation of the second-mentioned person,

and it is proved by the first-mentioned person that—

- (A) the statement accurately represented the statement made by the second-mentioned person, or the copy or the purported copy or extract was a correct copy of, or extract from, the report or valuation, as the case may be; and
- (B) after making such enquiries as were reasonable in the circumstances, the first-mentioned person had reasonable grounds to believe, and did believe until the time of the allotment of, issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, the securities, that the second-mentioned person, in making the statement, report or valuation, as the case may be—
 - (i) was competent to make it;
 - (ii) had given the consent required by subsection 244(1); and
 - (iii) had not withdrawn that consent.

Reliance on statement and information in respect of misleading or deceptive act

252. A person is not liable under section 249 in respect of an act that is misleading or deceptive or is likely to mislead or deceive if the person (hereinafter referred to as the “first-mentioned person”) proves that the act consists of a representation made in reliance on—

- (a) a statement made by a person referred to in subsection 244(1) (hereinafter referred to as the “second-mentioned person”); or
- (b) a report or valuation of the second-mentioned person,

and it is proved by the first-mentioned person that—

- (A) the representation accurately reflects the statement made by the second-mentioned person or is contained in the report or valuation of the second-mentioned person, as the case may be; and
- (B) after making such enquiries as were reasonable in the circumstances, the first-mentioned person had reasonable grounds to believe, and did believe until

the time of the allotment of, issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, the securities, that the second-mentioned person in making the statement, report or valuation, as the case may be—

- (i) was competent to make it;
- (ii) had given the consent required by subsection 244(1); and
- (iii) had not withdrawn that consent.

Reliance on public official statement in respect of false and misleading statement

253. (1) A person shall not be guilty of an offence under section 246 and is not liable under section 248 if the person proves that the false or misleading statement or material omission from a statement in a prospectus (hereinafter referred as the “defective statement”) is or is based on a statement made by a public officer in the course of his duties or is contained in a copy of or what purports to be a copy of, or an extract from, a public official document, and it is proved by the person that—

- (a) the defective statement accurately represented the statement made by the public officer including the context and form in which it was originally made; or
- (b) the defective statement is contained in a copy of or what purports to be a copy of, or extract from, a public official document,

and the person had reasonable grounds to believe, and did believe until the time of the allotment of, issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, the securities, that the defective statement was true and not misleading and that there was no material omission from the defective statement, as the case may be.

(2) A person is not liable under section 249 in respect of an act that is misleading or deceptive or is likely to mislead or deceive if the person proves that the act consists of a representation made in reliance on a public official document or statement made by a public officer in the course of his duties and it is proved that—

- (a) the representation accurately reflects the statement made by the public officer including the context and form in which it was originally made; or
- (b) the representation is contained in a copy of, or an extract from, a public official document,

and the person had reasonable grounds to believe, and did believe until the time of the allotment of, issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, the securities, that the representation was not misleading or deceptive or is likely to mislead or deceive.

Defence of withdrawal of consent

254. (1) A person who is named in a prospectus as—

- (a) a proposed director or director of an issuer or a principal adviser in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities;
- (b) making a statement that is included in the prospectus; or
- (c) making a statement on the basis of which a statement is included in a prospectus,

shall not be guilty of an offence under section 246 and is not liable under section 248 if—

- (A) in the case of a proposed director or director, having consented to become a proposed director or director of the issuer, he withdrew his consent before the issue of the prospectus, and the prospectus was issued despite such withdrawal; or
- (B) in any other case, where the prospectus was issued without his knowledge or consent, he gave reasonable public notice thereof forthwith after he became aware of its issue.

(2) A person who is named in a prospectus as—

- (a) a proposed director or director of an issuer, or a principal adviser in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities;
- (b) making a statement that is included in the prospectus; or
- (c) making a statement on the basis of which a statement is included in a prospectus,

shall not be guilty of an offence under section 246 and is not liable under section 248 if it is proved that the statement was not included in, or was not included substantially in, the form and context that the person had consented to.

Restriction on offering securities for subscription or purchase

255. (1) Except as otherwise expressly provided in this Act, a person shall not make—

- (a) an unsolicited invitation to subscribe for or purchase any securities;
- (b) an unsolicited offer for subscription or purchase of any securities; or
- (c) an unsolicited recommendation of any securities.

- (2) Subsection (1) shall not–
- (a) prohibit a licensed person or any other person allowed in writing by the Commission from making invitations or offers or recommendations–
 - (i) in relation to any securities which are listed on a stock market of a stock exchange within Malaysia or on a stock market of a securities exchange outside Malaysia which is approved by the Commission; and
 - (ii) to a person to whom, or to a number of persons in relation to each of whom, at least one of the following conditions is satisfied:
 - (A) the person has acquired or sold the securities through the licensed person or any other person allowed in writing by the Commission, in the twelve months before the making of the invitation or offer or recommendation; or
 - (B) when the invitation or offer or recommendation is made, a written agreement is in force under which the licensed person or any other person allowed in writing by the Commission is to, or may, whether subject to conditions or otherwise, act on the person's behalf in connection with the acquisition or sale of any securities by the person, or advise the person about the acquisition or sale of any securities by the person;
 - (b) prohibit a management company from providing further information, notices or recommendations to existing unit holders in relation to the investments of such unit holders;
 - (c) prohibit a person allowed in writing by the Commission from issuing such notices or recommendations relating to units in a unit trust scheme or prescribed investment scheme containing such information as may be allowed by the Commission;
 - (d) prohibit an invitation, offer or recommendation that is made in, or accompanied by, a prospectus that complies with this Act;
 - (e) prohibit an invitation, offer or recommendation which is made in relation to an excluded invitation or excluded offer;
 - (f) apply to an invitation or offer to which the provisions of the Companies Act 1965 apply; or
 - (g) apply to an invitation, offer or recommendation which is prescribed by the Commission by order published in the *Gazette*.
- (3) The Commission in exercising its discretion under subsection (2) may impose such terms and conditions as it thinks fit.

- (4) A person allowed in writing by the Commission under paragraph (2)(a) or (c) shall comply with such terms and conditions as may be imposed by the Commission.
- (5) The provisions of subsection (1) shall apply to an invitation, offer or recommendation in relation to any securities of a corporation or units of a unit trust scheme or prescribed investment scheme that is proposed to be formed.
- (6) Where the making of any invitation, offer or recommendation is subject to subsection (1) or is in respect of any exception under subsection (2), the provisions of section 363 of the Companies Act 1965 shall not apply.
- (7) A person who contravenes subsection (1) or (4) 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.

Agreements to exclude or restrict liability void

- 256.** An agreement is void in so far as it purports to exclude or restrict the liability of a person for contravention of section 246, 248 or 249 or for loss or damage under section 357.

DIVISION 4

Debentures

Subdivision 1 – Trust deeds, duties of trustees, borrowers, etc.

Application of this Division

- 257.** (1) The provisions of this Subdivision and section 283 shall not apply to any issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures specified in Schedule 8.
- (2) The provisions of this Division as specified in Schedule 9 shall not apply to any issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures specified in Schedule 9.
- (3) The provisions of this Division shall not apply to an issue, offer or invitation that is made to a person or a class of persons, or made in respect of a debenture or a class of debentures, as the Minister may, on the recommendation of the Commission, prescribe by order published in the *Gazette*.
- (4) A prescription made under subsection (3) may specify the provisions of this Division to which an issue, offer or invitation shall not apply.

Requirement for trust deed and trustee

- 258.** (1) Every person issuing, offering for subscription or purchase, or making an invitation to subscribe for or purchase, any debenture shall–

- (a) enter into a trust deed that meets the requirements of section 259;
 - (b) appoint a trustee who is a person eligible to be appointed or to act as trustee in accordance with section 260; and
 - (c) comply with the requirements and provisions of this Division.
- (2) A person issuing, offering for subscription or purchase, or making an invitation to subscribe for or purchase, any debenture shall not allot such debenture unless the person has entered into a trust deed that meets with the requirements of section 259 and has appointed a trustee who is a person eligible to be appointed or to act as trustee under section 260.
- (3) A person issuing, offering for subscription or purchase, or making an invitation to subscribe for or purchase, any debenture shall not revoke the trust deed unless the person has repaid all amounts payable under the debenture in accordance with the terms, provisions and covenants of the debenture and the trust deed.
- (4) A person who contravenes subsection (1), (2) or (3) 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.

Form and contents of trust deeds

- 259.** (1) A trust deed shall contain such provisions, covenants, requirements, information and particulars as may be specified by the Commission.
- (2) A person issuing, offering for subscription or purchase, or making an invitation to subscribe for or purchase, any debenture shall deliver a copy of the trust deed to the Commission together with such other particulars, information or documents as the Commission may specify.

Persons who can be trustees

- 260.** (1) A trustee shall be—
- (a) a company registered as a trust company under the Trust Companies Act 1949 [Act 100]; or
 - (b) a corporation that is a public company under the Companies Act 1965 or under the laws of any other country,
- which has been approved by the Commission to act as trustee for the purposes of this Act.
- (2) A person shall not be eligible to be appointed or to act as trustee for debenture holders without the approval of the Commission if the person—
- (a) is a shareholder who beneficially holds shares in the borrower;

- (b) is beneficially entitled to monies owed by the borrower to it;
 - (c) has entered into a guarantee in respect of the amount secured or payable under the debenture; or
 - (d) is a related corporation of—
 - (i) the persons referred to in paragraphs (a) to (c); or
 - (ii) the borrower.
- (3) An application for approval made under subsection (1) or (2) shall be made to the Commission in accordance with such procedure or other requirement as may be specified by the Commission.
- (4) Notwithstanding the provisions of subsection (2), a person is not prevented from being appointed or from acting as trustee by reason only that—
 - (a) the borrower owes to the trustee or any related corporation of the trustee any monies, so long as such monies are—
 - (i) monies that do not, at the time of the appointment or at any time within a period of three months after the debentures are first offered for subscription or purchase or in respect of which an invitation to subscribe for or purchase is made, exceed one-tenth of the amount of the debentures proposed to be issued within that period and do not, at any time after the expiration of that period, exceed one-tenth of the amount the borrower owes to the holders of the debentures; or
 - (ii) monies to which the trustee or any related corporation of the trustee is entitled to as trustee for holders of any debenture of the borrower, in accordance with the terms, provisions or covenants of the debenture or the trust deed; or
 - (b) the trustee or a related corporation of the trustee, despite being beneficial owners in the shares of the borrower, do not have the right to exercise more than one-twentieth of the voting power at any general meeting of the borrower.
- (5) Where an application has been made to the Commission under subsection (3), the Commission may approve such application subject to such terms and conditions as it thinks fit.
- (6) In exercising its discretion under subsection (5), the Commission shall have regard to—
 - (a) the interests of holders of any debenture; and
 - (b) the ability of the trustee to safeguard the interests of such debenture holders

as required by the provisions and covenants of the trust deed and the provisions of this Act.

- (7) The Commission may revoke its approval under subsection (5) where the trustee has failed to comply with any term or condition imposed under subsection (5) or has contravened any provision of this Act.
- (8) A trustee who—
 - (a) contravenes subsection (1) or (2); or
 - (b) contravenes a term or condition imposed by the Commission under subsection (5),

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

Existing trustee to continue to act until new trustee takes office

261. Notwithstanding the provisions of section 43 of the Trustee Act 1949 [Act 208] or any term, provision or covenant in the debenture or trust deed, an existing trustee shall continue to act as trustee until a new trustee is appointed and has taken office as trustee.

Replacement of trustee

- 262.** (1) Where no provision has been made in the debenture or trust deed for the appointment of a successor to a retiring trustee, the borrower shall, within one month after becoming aware of the intention of the trustee to retire, appoint as successor to the retiring trustee a trustee who is a person eligible to be appointed or to act as trustee under section 260.
- (2) A court may, on the application of the borrower, a debenture holder or the Commission—
- (a) appoint, as trustee, a person who is eligible to be appointed or to act as trustee under section 260 if—
 - (i) the trustee has not been validly appointed; or
 - (ii) the trustee has ceased to exist; or
 - (b) terminate the appointment of an existing trustee and appoint in his place, as trustee, a person who is eligible to be appointed or to act as trustee under section 260 if—
 - (i) the existing trustee is not eligible to be appointed or to act as trustee under section 260;

- (ii) the existing trustee fails or refuses to act in accordance with the provisions or covenants of the trust deed or the provisions of this Act;
 - (iii) a receiver is appointed over the whole or a substantial part of the assets or undertaking of the existing trustee and has not ceased to act under that appointment, or a petition is presented for the winding up of the existing trustee (other than for the purpose of and followed by a reconstruction, unless during or following such reconstruction the existing trustee becomes or is declared to be insolvent); or
 - (iv) the trustee is under investigation for conduct that contravenes the Trust Companies Act 1949, the Trustee Act 1949, the Companies Act 1965 or the securities law.
- (3) A borrower who contravenes subsection (1) commits an offence.

Duties of the borrower

263. (1) A borrower shall—

- (a) use its best endeavours to carry on and conduct its business in a proper and efficient manner;
- (b) provide a copy of the trust deed to—
 - (i) a debenture holder;
 - (ii) a trustee; or
 - (iii) any other person as may be allowed by the Commission,if they request a copy and upon payment of such reasonable sum as may be imposed by the borrower;
- (c) make all of its financial and other records available for inspection by—
 - (i) the trustee;
 - (ii) an officer or employee of the trustee authorised by the trustee to carry out the inspection; or
 - (iii) an approved company auditor appointed by the trustee to carry out the inspection,and give the person carrying out the inspection any information, explanation or other assistance that such person may require; and
- (d) comply with any direction issued by the Commission under subsection 280(1).

- (2) A borrower who contravenes paragraph (1)(a) shall not be guilty of an offence.
- (3) A borrower who contravenes paragraph (1)(b) or (c) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.
- (4) A borrower who contravenes paragraph (1)(d) commits an offence.
- (5) Where a borrower contravenes paragraph (1)(b) or (c), the Commission may direct the borrower to comply with the provisions of those paragraphs.
- (6) A borrower who contravenes a direction of the Commission issued pursuant to subsection (5) commits an offence.

Duty of borrower to replace trustee

- 264.** (1) A borrower shall take all reasonable steps to replace a trustee as soon as is practicable after becoming aware that—
- (a) the trustee has ceased to exist;
 - (b) the trustee has not been validly appointed;
 - (c) the trustee is not eligible to be appointed or to act as trustee under section 260;
 - (d) the trustee has failed or has refused to act as trustee in accordance with the provisions or covenants of the trust deed or the provisions of this Act;
 - (e) a receiver is appointed over the whole or a substantial part of the assets or undertaking of the existing trustee and has not ceased to act under that appointment, or a petition is presented for the winding up of the existing trustee (other than for the purpose of and followed by a reconstruction, unless during or following such reconstruction the existing trustee becomes or is declared to be insolvent); or
 - (f) the trustee is under investigation for conduct that contravenes the Trust Companies Act 1949, the Trustee Act 1949, the Companies Act 1965 or the securities law.
- (2) A borrower who contravenes subsection (1) commits an offence.

Duty of borrower to inform trustee about charge, etc.

- 265.** (1) Where a borrower creates a charge, it shall—
- (a) give the trustee written details of the charge within twenty-one days after it is created; and
 - (b) if the total amount to be advanced on the security of the charge is indeterminate and the advances are not merged in a current account with

a bank, trade creditor or any other person, give the trustee written details of the amount of each advance within seven days after it is made.

- (2) A borrower who contravenes subsection (1) commits an offence.

Duty of borrower to give trustee and Commission quarterly reports

- 266.** (1) A borrower shall, within one month after the end of each quarter—
- (a) deliver to the trustee a quarterly report that sets out the information required by subsections (3), (4), (5) and (7);
 - (b) lodge a copy of the report with the Registrar; and
 - (c) deliver a copy of the report to the Commission.
- (2) For the purposes of this section—
- (a) the first quarter shall be a period of three months ending on a day fixed by the borrower by written notice to the trustee, provided that the day fixed shall be less than six months after the first issue of a debenture under the trust deed; and
 - (b) each of the subsequent quarters shall be for periods of three months, or for such shorter time as the trustee may allow in special circumstances.
- (3) The report for a quarter shall include details of—
- (a) any breach of any limitations on the amount the borrower may borrow;
 - (b) any failure by the borrower and each guarantor to comply with the terms, provisions or covenants of the debenture or the trust deed or contravention of the provisions of this Act during the quarter;
 - (c) any event that has happened during the quarter that has caused, or could cause, one or more of the following:
 - (i) any amount secured or payable under the debenture to become immediately payable;
 - (ii) the debenture to become immediately enforceable; or
 - (iii) any other right or remedy under the terms, provisions or covenants of the debenture or the trust deed to become immediately enforceable;
 - (d) any circumstance that has occurred during the quarter that would materially prejudice—

- (i) the borrower, any of its subsidiaries, or any of the guarantors, as the case may be; or
 - (ii) any security or charge included in or created by the debenture or the trust deed;
 - (e) any substantial change in the nature of the business of the borrower, any of its subsidiaries or its guarantors, as the case may be, that has occurred during the quarter;
 - (f) any of the following events that has happened in the quarter:
 - (i) the appointment of a guarantor;
 - (ii) the cessation of liability of a guarantor for the payment of the whole or part of the monies for which it was liable under the guarantee; or
 - (iii) a change of name of a guarantor;
 - (g) the net amount outstanding on any advances at the end of the quarter if the borrower has created a charge where–
 - (i) the total amount to be advanced on the security of the charge is indeterminate; and
 - (ii) the advances are merged in a current account with a bank, trade creditor or any other person; and
 - (h) any other matter that may materially prejudice the interests of debenture holders.
- (4) If monies are owed to a borrower during the quarter by a related corporation of the borrower, not being such amounts that the borrower deposits with a licensed institution in the normal course of the borrower's business, the report must also include details of–
- (a) the total amount owing by the related corporation during the quarter; and
 - (b) the total amount owing by the related corporation at the end of the quarter.
- (5) If a borrower has assumed a liability of a related corporation during the quarter, the report shall include details of the extent of the liability assumed during the quarter and the extent of liability as at the end of the quarter.
- (6) For purposes of subsections (4) and (5), the report–
- (a) shall distinguish between amounts owing and assumptions of liability that are secured and those that are unsecured; and

- (b) may exclude any deposit, loan or assumption of liability on behalf of the related corporation if the related corporation has–
 - (i) guaranteed the repayment of the debentures of the borrower; and
 - (ii) secured the guarantee by a charge over all of its property in favour of the trustee for the holders of the debentures of the borrower.
- (7) If a prospectus issued in connection with an issue of, offer for subscription or purchase of, or an invitation to subscribe for or purchase, any debenture includes a statement relating to a particular purpose or project for which monies received by a person in response to the issue, offer or invitation are to be applied, the report shall include details of the progress that has been made towards achieving that purpose or completing that project.
- (8) The report shall–
 - (a) be made in accordance with a resolution of the directors; and
 - (b) specify the date on which the report is made.
- (9) Where a borrower fails to deliver the report to the trustee, the trustee shall inform the Commission of that fact.
- (10) A borrower who contravenes this section commits an offence.

Duty of borrower to inform trustee and Commission of occurrence of material event

- 267.** (1) Notwithstanding section 266, a borrower shall inform the trustee and the Commission as soon as possible after the borrower becomes aware–
- (a) of the happening of any event that has caused or could cause, one or more of the following:
 - (i) any amount secured or payable under the debenture to become immediately payable;
 - (ii) the debenture to become immediately enforceable; or
 - (iii) any other right or remedy under the terms, provisions or covenants of the debenture or the trust deed to become immediately enforceable; or
 - (b) of any circumstance that has occurred that would materially prejudice–
 - (i) the borrower, its subsidiaries or its guarantors; or
 - (ii) any security or charge included in or created by the debenture or the trust deed.

- (2) A borrower who contravenes subsection (1) commits an offence.

Duty of borrower where prospectus states purpose or project for which monies are to be applied

- 268.** (1) Where the prospectus relating to a debenture contains a statement as to the particular purpose or project for which amounts secured or payable under the debenture to which the trust deed relates are to be applied and the borrower intends to change the purpose or project for which such amounts are to be applied after the debenture has been issued to debenture holders, the borrower shall—
- (a) notify the Commission; and
 - (b) give a notice in writing that is approved by the Commission under subsection (2) to each debenture holder.
- (2) A notice referred to in subsection (1) may be approved by the Commission if the notice—
- (a) specifies the purpose or project for which amounts secured or payable under the debenture would in fact be applied;
 - (b) offers to repay such amounts to each debenture holder; and
 - (c) contains such information and particulars as may be approved by the Commission.
- (3) The borrower shall not be liable to repay the amount secured or payable under the debenture issued by the borrower under subsection (1) where the debenture holder does not demand in writing for the repayment of such amounts within fourteen days after receipt of the notice or such longer period as may be specified in the notice.
- (4) Where the Commission is of the opinion that the new purpose or project is contrary to the approval or to the terms or conditions of the approval granted under subsection 212(5), the Commission may disallow the borrower from pursuing the new purpose or project for which amounts secured or payable under the debenture are to be applied and direct repayment of such amounts to each person from whom such amounts were received.
- (5) Where a borrower receives a notice referred to in paragraph 273(2)(h), subsection 280(4) or (5), the borrower shall be liable to repay the amount secured or payable under the debenture issued by the borrower to any person to whom such amounts are owed or from whom such amounts were received.
- (6) Subject to subsection (4), a notice given by the borrower under paragraph (1)(b) shall have effect as if the purpose or project specified in the notice is the purpose or project specified in the prospectus.
- (7) Notwithstanding the provisions of subsection (1), the Commission may, on the

written application of any borrower or of its own accord, make an order relieving such person from, or approving any variation of, the requirements of this section.

- (8) A borrower who 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.

Obligations of directors of borrower to deliver financial statements

- 269.** (1) The directors of every borrower shall deliver to the trustee and the Commission and lodge with the Registrar such financial statements of the borrower as may be specified by the Commission.
- (2) Subject to subsection (3), the directors of the borrower shall deliver to the trustee and the Commission a copy of the borrower's annual audited accounts within two weeks from the date of the borrower's annual general meeting.
- (3) Where the borrower is a listed corporation that is required to submit information to the Commission under section 319, the borrower shall not be required to deliver its annual audited accounts to the Commission under this section.
- (4) Where the directors of a borrower do not deliver to the trustee a copy of such financial statements of the borrower as may be specified by the Commission under subsection (1) or a copy of the borrower's annual audited accounts under subsection (2), the trustee shall inform the Commission of that fact.
- (5) Where the directors of a borrower contravene or fail to take all reasonable steps to secure compliance with subsection (1) or (2), each director commits an offence.

Borrower to issue document evidencing indebtedness, etc.

- 270.** (1) The borrower shall, within two weeks or such other period as may be specified by the Commission, after the acceptance of the monies in response to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, a specified number or value of debentures, give to that person a document that acknowledges, evidences or constitutes an acknowledgement of the indebtedness of the borrower in respect of the receipt of monies in response to the issue, offer or invitation.
- (2) A document issued by the borrower in respect of any monies received by the borrower in response to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, any debenture that certifies that a person named in the document—
- (a) is the registered holder of a specified number or value of debentures issued by the borrower; and
 - (b) is subject to the provisions and covenants contained in a trust deed referred to or identified in the document,

shall be deemed to be a document evidencing the indebtedness of the borrower in respect of such monies.

- (3) A borrower shall not accept or retain subscriptions to a debenture issue in excess of the amount of the issue as disclosed in the prospectus unless the borrower has specified in the prospectus—
- (a) that it clearly reserves the right to accept or retain over-subscriptions; and
 - (b) a limit expressed as a specific sum of money on the amount of over-subscriptions that may be accepted or retained, being an amount not more than twenty-five per centum in excess of the amount of the issue as disclosed in the prospectus.
- (4) A borrower who contravenes subsection (1) or (3) commits an offence.

Duties of guarantors

- 271.** (1) Where a borrower is required to enter into a trust deed under section 258 in relation to any debenture, a guarantor in respect of such debenture shall—
- (a) use its best endeavours to carry on and conduct its business in a proper and efficient manner;
 - (b) make all of its financial or other records available for inspection by—
 - (i) the trustee;
 - (ii) an officer or employee of the trustee authorised by the trustee to carry out the inspection; or
 - (iii) an approved company auditor appointed by the trustee to carry out the inspection,and give the person carrying out the inspection any information, explanation or other assistance that such person may require;
 - (c) furnish the borrower with any information relating to itself which is required under subsection 266(3) to be contained in the quarterly report, within fourteen days from the date the borrower requests for such information by notice in writing or within such other period which shall not be less than fourteen days as may be specified in the notice; and
 - (d) where it creates a charge—
 - (i) give the trustee written details of the charge within twenty-one days after it is created; and
 - (ii) give the trustee written details of—

- (A) the amount of each advance made within seven days after it is made; or
 - (B) where the advances are merged in a current account with a bank, trade creditor or any other person, the net amount outstanding on the advances at the end of every three months.
- (2) A guarantor who contravenes paragraph (1)(a) shall not be guilty of an offence.
 - (3) A guarantor who contravenes paragraph (1)(b) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.
 - (4) A guarantor who contravenes paragraph (1)(c) or (d) commits an offence.
 - (5) Where a guarantor contravenes paragraph (1)(b), the Commission may direct the guarantor to comply with the provisions of that paragraph.
 - (6) A guarantor who contravenes a direction of the Commission issued pursuant to subsection (5) commits an offence.

Obligations of directors of guarantor to deliver financial statements

- 272.** (1) The directors of every guarantor shall deliver to the trustee and the Commission and lodge with the Registrar such financial statements of the guarantor as may be specified by the Commission.
- (2) Subject to subsection (3), the directors of the guarantor shall deliver to the trustee and the Commission a copy of the guarantor's annual audited accounts within two weeks from the date of the guarantor's annual general meeting.
 - (3) Where the guarantor is a listed corporation that is required to submit information to the Commission under section 319, the guarantor shall not be required to deliver its annual audited accounts to the Commission under this section.
 - (4) Where the directors of a guarantor do not deliver to the trustee a copy of such financial statements of the guarantor as may be specified by the Commission under subsection (1) or a copy of the guarantor's annual audited accounts under subsection (2), the trustee shall inform the Commission of that fact.
 - (5) Where the directors of a guarantor contravene or fail to take all reasonable steps to secure compliance with subsection (1) or (2), each director commits an offence.

Duties of trustees

- 273.** (1) The trustee of a trust deed that is entered into under section 258–
- (a) shall satisfy itself that the provisions of a prospectus or an information memorandum relating to the debenture do not contain any matter which is inconsistent with the terms, provisions and covenants of the debenture and the trust deed;

- (b) shall ensure that the borrower and each guarantor complies with Division 7 of Part IV of the Companies Act 1965, to the extent that it applies to the debenture;
 - (c) shall take reasonable steps to ensure that the borrower or guarantor remedies any breach of the terms, provisions or covenants of the debenture or the trust deed or any contravention of the provisions of this Act;
 - (d) shall notify the Commission as soon as practicable if the borrower or guarantor fails to remedy any breach of the terms, provisions or covenants of the debenture or the trust deed or any contravention of the provisions of this Act;
 - (e) shall, where the borrower or the guarantor fails to remedy any breach of the terms, provisions or covenants of the debenture or the trust deed or any contravention of the provisions of this Act, call for a meeting of debenture holders and place before the meeting proposals for the protection of the interest of the debenture holders as the trustee considers necessary or appropriate and obtain their directions; and
 - (f) shall notify the Commission as soon as practicable where the trustee discovers that it is not eligible to be appointed or to act as trustee under section 260.
- (2) Where a proposal relating to a debenture is approved by the Commission under section 212, the trustee shall–
- (a) exercise reasonable diligence to ascertain whether the assets of the borrower and of each guarantor which are or may be available, whether by way of security or otherwise, are insufficient or are likely to become insufficient to repay the amount secured or payable under the debenture to which the trust deed relates when it becomes due;
 - (b) notify the Commission as soon as practicable if–
 - (i) the borrower has contravened section 265 or 266; or
 - (ii) a guarantor has contravened paragraph 271(1)(d);
 - (c) where the borrower or the guarantor fails to remedy any breach of the terms, provisions or covenants of the debenture or the trust deed or any contravention of the provisions of this Act call for a meeting of debenture holders and place before the meeting proposals for the protection of the interest of the debenture holders as the trustee considers necessary or appropriate and obtain their directions;
 - (d) comply with any directions given to it at a debenture holders' meeting referred to in sections 277, 278 and 279 unless–
 - (i) the trustee is of the opinion that the direction is inconsistent with the terms, provision or covenant of the debenture or the trust deed or the provisions of this Act or is otherwise objectionable; and

- (ii) the trustee has either obtained, or is in the process of obtaining, an order from the court under section 282 to set aside or vary that direction;
- (e) give the debenture holders a statement explaining the effect of any proposal that the borrower submits to the debenture holders before any meeting that–
 - (i) the court calls in relation to a scheme of arrangement or compromise under subsection 176(1) of the Companies Act 1965; or
 - (ii) the trustee calls under subsection 278(1);
- (f) apply to the Commission for a direction under subsection 280(1) where the trustee upon due inquiry is of the opinion that the assets of the borrower and the guarantor which are or should be available, whether by way of security or otherwise, are insufficient or are likely to become insufficient to repay the amount secured or payable under the debenture to which the trust deed relates as and when it becomes due;
- (g) apply to court for an order under section 282 where–
 - (i) the trustee upon due inquiry is of the opinion that the assets of the borrower and the guarantor which are or should be available, whether by way of security or otherwise, are insufficient or are likely to become insufficient to repay the amount secured or payable under the debenture to which the trust deed relates as and when it becomes due; or
 - (ii) the borrower has failed to comply with a direction made by the Commission under subsection 280(1); and
- (h) where the prospectus relating to the debenture contains a statement as to the particular purpose or project for which such amount are to be applied and–
 - (i) it appears to the trustee that the purpose or project has not been achieved within the time stated in the prospectus or where no time is stated, within a reasonable time; or
 - (ii) it is the trustee's opinion that notice is necessary for the protection of the interests of debenture holders,

give a notice in writing to the borrower requiring it to repay the amounts secured or payable under the debenture to which the trust deed relates within one month after the notice is given and deliver a copy of that notice to the Commission, unless the trustee is satisfied of any or all of the following:

- (A) that the purpose or project has been substantially achieved or completed; or

- (B) that the interests of debenture holders have not been materially prejudiced by the failure to achieve or complete the purpose or project within the time stated in the prospectus or within a reasonable time.
- (3) For the purposes of paragraphs (2)(f) and (g), a trustee in making any application to the Commission or to the court—
 - (a) shall have regard to the nature and kind of security given when the debentures were first issued or, if no security was given, shall have regard to the position of debenture holders as unsecured creditors of the borrower; and
 - (b) may rely on any certificate or report given or statement made by any advocate, auditor or officer of the borrower or the guarantor if it has reasonable grounds for believing that the advocate, auditor or officer was competent to give or make the certificate, report or statement.
- (4) A trustee who contravenes subsection (1) shall not be guilty of an offence.

Exemptions and indemnification of trustee from liability

- 274.** (1) Subject to this section, a term, provision or covenant of a debenture or a trust deed or a term of a contract with holders of debentures secured by a trust deed shall be void insofar as the term, provision or covenant, as the case may be, would have the effect of—
- (a) exempting a trustee from liability for contravention of any provision of this Act or for breach of trust or for failure to show the degree of care and diligence required of it as trustee; or
 - (b) indemnifying a trustee against liability for contravention of any provision of this Act or for breach of trust or for failure to show the degree of care and diligence required of it as trustee,
- unless the term, provision or covenant—
- (A) releases the trustee from liability for anything done or omitted to be done before the release is given; or
 - (B) enables a meeting of debenture holders to approve the release of a trustee from liability for anything done or omitted to be done before the release is given.
- (2) For the purpose of paragraph (1)(B)—
- (a) a release is approved if the debenture holders who vote for the resolution hold seventy-five per centum of the nominal value of the debentures held by all the debenture holders who attend the meeting and vote on the resolution; and

- (b) a debenture holder attends the meeting and votes on the resolution if–
 - (i) such debenture holder attends the meeting in person and votes on the resolution; or
 - (ii) if proxies are permitted, the debenture holder is represented at the meeting by a proxy and the proxy votes on the resolution.

Indemnity of trustee

- 275.** (1) A trustee is not liable for anything done or omitted to be done in accordance with a direction given to the trustee by the debenture holders at any meeting called under section 277, 278 or 279.
- (2) A trustee may, in addition to any other rights under the trust deed, seek reimbursement by deducting out of any monies coming into the trustee's hands from the borrower all reasonable costs incurred in explaining the effect of any proposal that the borrower submits to the debenture holders in the circumstances set out in paragraph 273(2)(e).

Duty of auditor to trustee for debenture holders

- 276.** (1) An auditor of a borrower shall, within seven days after furnishing the borrower with any balance sheet, profit and loss account or any report, certificate or other document which he is required by the Companies Act 1965 or by the debenture or trust deed to give to the borrower, send a copy of such balance sheet, profit and loss account, report, certificate or other document by post to every trustee for the holders of debentures of the borrower.
- (2) Where, in the performance of his duties as auditor of a borrower, the auditor becomes aware of any matter which, in his professional opinion, is relevant to the exercise and performance of the powers and duties imposed on the trustee–
 - (a) by this Act; or
 - (b) under the trust deed,the auditor shall, as soon as practicable after becoming aware of the matter, report the matter to the borrower and the trustee.
- (3) Where, in the performance of his duties as auditor for the borrower, the auditor becomes aware–
 - (a) of any matter which, in his professional opinion, may constitute a contravention of any provision of this Act; or
 - (b) of any irregularities that may have a material effect on the ability of the borrower to repay any amount under the debenture,the auditor shall immediately report the matter to the Commission.

- (4) The auditor shall not, in the absence of proof of malice on his part, be liable to any action for defamation at the suit of any person in respect of any statement made in the circumstances referred to in subsection (1), (2) or (3).
- (5) An auditor who contravenes subsection (1) or (2) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.
- (6) An auditor who contravenes subsection (3) commits an offence.

Duty of borrower to call a meeting

- 277.** (1) A borrower shall call a meeting of debenture holders if—
- (a) debenture holders who together hold ten per cent or more of the nominal value of the issued debentures to which the trust deed relates direct the borrower to do so;
 - (b) the direction is given to the borrower in writing at its registered office; and
 - (c) the purpose of the meeting is to—
 - (i) consider the financial statements or annual audited accounts that were last delivered to the trustee under section 269 or 272;
 - (ii) give the trustee such directions as the meeting thinks proper; or
 - (iii) consider any other matter in relation to the trust deed.
- (2) Where a borrower is required to call a meeting, it must give notice of the time and place of the meeting to—
- (a) the trustee;
 - (b) the borrower's auditor; and
 - (c) any debenture holder whose name is entered on the register of debenture holders or record of depositors, as the case may be,
- in accordance with the provisions of subsections (3) and (4).
- (3) For the purpose of subsection (2), notice to joint holders of a debenture must be given to the joint holder named first in the register of debenture holders or record of depositors, as the case may be.
- (4) A borrower may give notice to a debenture holder—
- (a) personally;
 - (b) by sending it by post to the address of the debenture holder in the register of debenture holders; or

- (c) by any other means that the terms, provisions or covenants of the debenture or the trust deed permit.
- (5) A notice of meeting posted to a debenture holder shall be taken as being given three days after it is posted, unless the terms, provisions or covenants of the debenture or the trust deed provide otherwise.
- (6) A trustee may appoint a person to chair a meeting of debenture holders called under subsection (1) and where the trustee does not exercise this power, the debenture holders present at the meeting may appoint a person to chair the meeting.
- (7) A borrower who contravenes subsection (1) or (2) commits an offence.

Power of trustee to call a meeting

- 278.** (1) Where a borrower or guarantor fails to remedy any breach of the terms, provisions or covenants of a debenture or a trust deed or any contravention of any provision of this Act when required by the trustee, the trustee may–
- (a) call a meeting of debenture holders;
 - (b) inform the debenture holders of the failure at the meeting;
 - (c) submit proposals for the protection of debenture holders’ interests to the meeting; and
 - (d) ask for directions from the debenture holders in relation to the matter.
- (2) A trustee may appoint a person to chair a meeting of debenture holders called under subsection (1) and where the trustee does not exercise this power, the debenture holders present at the meeting may appoint a person to chair the meeting.
- (3) A trustee is entitled to be reimbursed by the borrower for any costs incurred in calling for a meeting of debenture holders in pursuance of any of its duties or functions under this Act or any term, provision or covenant of the debenture or the trust deed.

Court may order a meeting of debenture holders

- 279.** (1) Without limiting the effect of section 281 or 282, the court may make an order under either of those sections for a meeting of all or any of the debenture holders to be held to give directions to the trustee.
- (2) An order made under subsection (1) may direct the trustee to–
- (a) place before the debenture holders any information concerning the interests of the debenture holders;

- (b) place before the debenture holders any proposal to protect the interests of the debenture holders that the court directs or the trustee considers appropriate; and
 - (c) obtain the debenture holders' directions concerning the protection of the interests of the debenture holders.
- (3) The meeting shall be held and be conducted in such manner as the court may direct.
 - (4) A trustee may appoint a person to chair the meeting and where the trustee does not exercise this power, the debenture holders present at the meeting may appoint a person to chair the meeting.

Powers of Commission to protect interests of debenture holders

- 280.** (1) The Commission may, on the application of a trustee under paragraph 273(2)(f) or of its own accord where a trustee fails or refuses to act, issue a written direction to a borrower imposing restrictions on the activities of the borrower as the Commission thinks necessary for the protection of the interests of debenture holders.
- (2) The Commission shall serve the written direction issued under subsection (1) at the borrower's registered office in Malaysia.
 - (3) The Commission, in issuing a direction under subsection (1), shall first give the borrower an opportunity to be heard in relation to the application.
 - (4) Where a prospectus relating to any debenture contains a statement as to the particular purpose or project for which amounts secured or payable under the debenture are to be applied and—
 - (a) it appears to the Commission that the purpose or project has not been achieved within the time stated in the prospectus or, where no time is stated, within a reasonable time;
 - (b) it is the Commission's opinion that notice is necessary for the protection of the interests of debenture holders; and
 - (c) the trustee in relation to the debenture has failed or refused to act under paragraph 273(2)(h),

the Commission may, upon due inquiry, direct the borrower in writing to repay the amounts secured or payable under the debenture issued by the borrower within one month after the notice is given, unless the Commission is satisfied on any or all of the following:

- (A) that the purpose or project has been substantially achieved or completed; or

- (B) that the interests of debenture holders have not been materially prejudiced by the failure to achieve or complete the purpose or project within the time stated in the prospectus or within a reasonable time.
- (5) Where a prospectus relating to any debenture contains a statement as to the particular purpose or project for which the amounts secured or payable under the debenture are to be applied and the Commission becomes aware, by means other than upon notification by a borrower under subsection 268(1), that such amounts are in fact used or intended to be used for a purpose or project not specified in the prospectus, the Commission may, upon due inquiry, direct the borrower in writing to repay such amounts to each person from whom such amounts were received or if the debentures have been issued, to each debenture holder, within one month after the notice is given.

General power of court to give directions and determine questions

281. Where a trustee applies to the court for any direction in relation to the performance of the trustee's functions or to determine any question in relation to the interests of debenture holders, the court may give any direction and make any declaration or determination in relation to the matter or make any ancillary or consequential orders that the court considers appropriate.

Specific power of the court

- 282.** (1) Where a borrower, trustee or the Commission applies to the court for an order under the provisions of this Act or pursuant to any term, provision or covenant of a debenture or a trust deed, the court may make any or all of the following orders:
- (a) an order staying an action or other civil proceedings before a court by or against a borrower or a guarantor;
 - (b) an order restraining a borrower from paying any monies to the debenture holders or holders of any other class of debentures;
 - (c) an order that any security for the debentures be enforceable immediately or at the time the court directs, whether or not the debentures are irredeemable or redeemable only on the happening of a contingency;
 - (d) an order appointing a receiver of any property constituting security for the debentures;
 - (e) an order restricting advertising by a borrower for deposits or loans;
 - (f) an order restricting borrowing by a borrower;
 - (g) an order varying or rescinding any order made by the court under this Act;
or
 - (h) any other order that the court considers appropriate to protect the interests of existing or prospective debenture holders.

- (2) In deciding whether to make an order under subsection (1), the court shall have regard to the rights of all creditors of the borrower.

Subdivision 2 – General

Register of debenture holders

- 283.** (1) Subject to subsection (2), every borrower which issues debentures, not being debentures transferable by delivery, shall keep a register of debenture holders at its registered office or at some other place in Malaysia.
- (2) Where the borrower is a company, the borrower shall comply with the provisions of section 70 of the Companies Act 1965 that relate to the obligation to keep a register of debenture holders and a branch register of debenture holders.
- (3) The register shall contain particulars of–
- (a) the names and addresses of debenture holders; and
 - (b) the amount of debentures held by them.
- (4) The register shall be open for inspection by registered debenture holders or shareholders of the borrower except when duly closed under subsection (5).
- (5) A register is deemed to be duly closed–
- (a) if it is closed in accordance with the provisions contained in–
 - (i) the constituent documents of the borrower;
 - (ii) the debentures or debenture stock certificates;
 - (iii) the trust deed; or
 - (iv) any other document relating to or securing the debenture; and
 - (b) where it is closed for such periods as is specified in any of the documents mentioned in subparagraphs (5)(a)(i),(ii), (iii) and (iv), provided that such period does not exceed, in the aggregate, thirty days in any calendar year.
- (6) A borrower shall, upon request, supply every registered debenture holder or shareholder of the borrower with a copy of the register of debenture holders, or such part thereof, on the payment of a reasonable sum as may be specified by the borrower.
- (7) The copy of the register of debenture holders referred to in subsection (6) need not include the particulars of any debenture holder other than the name and address of the registered debenture holder and the debentures held by him.

- (8) If inspection is refused, or a copy is refused or not forwarded within a reasonable time after a request has been made pursuant to this section, the borrower and every officer of the borrower who is in default commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit.
- (9) A borrower issuing debentures may keep at any place outside Malaysia a branch register of debenture holders which shall be deemed to be a part of the borrower's register of debenture holders, and the provisions of Division 4 of Part V of the Companies Act 1965 shall, with such adaptations as are necessary, apply to and in relation to the keeping of a branch register of debenture holders.
- (10) Notwithstanding the provisions of subsections (1) to (9), the Commission may, either on the written application of any borrower referred to in subsection (1) or of its own accord, make an order relieving such borrower from, or approving any variation from, the requirements of this section relating to the maintenance of a register of debenture holders, subject to such terms and conditions as it thinks fit.
- (11) A borrower and every officer of the borrower who is in contravention of subsection (1), (3) or (9) commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit.

Specific performance

- 284.** A contract with a borrower to take up and pay for any debenture of the borrower may be enforced by an order for specific performance.

Perpetual debentures

- 285.** Notwithstanding any rule of law or equity which disallows perpetual debentures, a condition contained in any debenture or any trust deed relating to a debenture shall not be invalid by reason only that the debenture is—

- (a) irredeemable;
- (b) redeemable only on the happening of a contingency, however remote; or
- (c) redeemable on the expiration of a period, however long.

Reissue of redeemed debentures

- 286.** (1) Where a borrower has redeemed any debenture—
- (a) unless any provision to the contrary, whether express or implied, is contained in the constituent documents of the borrower or any contract entered into by the borrower; or
 - (b) unless the borrower has shown an intention that the debenture shall be cancelled by passing a resolution to that effect or by some other act,

the borrower shall have and shall be deemed to have had the power to reissue the debenture, either by reissuing the same debenture or issuing any other debenture in its place.

- (2) The reissue of a debenture or the issue of one debenture in place of another under subsection (1) shall not be regarded as an issue of a new debenture for the purpose of any provision limiting the amount or number of debentures that may be issued by the borrower.
- (3) After the reissue, the person entitled to the debenture shall have and shall be deemed to have had the same priorities as if the debenture had never been redeemed.
- (4) Where a borrower has deposited any of its debentures to secure advances on a current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the borrower having ceased to be in debit while the debentures remain so deposited.

DIVISION 5

Unit Trust Schemes and Prescribed Investment Schemes

Interpretation

287. In this Division, unless the context otherwise requires, “deed” means a document having the effect of a deed and, where applicable, includes a supplementary deed.

Requirement for trustee and deed

- 288.** (1) Subject to subsection (2), every person issuing, offering for subscription or purchase, or making an invitation to subscribe for or purchase, any unit shall—
- (a) ensure that a trustee who has been approved by the Commission under section 289 and who is eligible to be appointed or to act as trustee under section 290 has been appointed;
 - (b) enter into a deed that has been registered under section 293 and that meets with the requirements of section 294 or ensure that there is in force a deed that has been registered under section 293 and that meets with the requirements of section 294; and
 - (c) comply with the requirements and provisions of this Act.
- (2) No person except a management company approved by the Commission under section 289 or a person authorised to act on behalf of a management company that has been approved by the Commission under section 289 shall—
- (a) issue;

- (b) offer for subscription or purchase; or
 - (c) invite any person to subscribe for or purchase, any unit.
- (3) A person who contravenes subsection (1) or (2) commits an offence.

Approval of trustee and management company

- 289.** (1) No person shall act or be appointed to act as trustee or as a management company in relation to a unit trust scheme or prescribed investment scheme without obtaining the prior approval of the Commission to act as trustee or as a management company.
- (2) The Commission may, subject to such terms and conditions as it thinks fit, approve—
- (a) a company to act as a management company of a unit trust scheme or a prescribed investment scheme; and
 - (b) a person who is eligible to be appointed or to act as trustee under section 290, to act as trustee of a unit trust scheme or a prescribed investment scheme.
- (3) The Commission may, at any time, by reason of a breach of a term or condition subject to which the approval was granted under this Division or by reason of a contravention of any securities law, revoke such approval.
- (4) Without prejudice to subsection (1), the Commission may impose such other terms and conditions as it thinks fit while the approval is in force, but if the terms and conditions proposed to be imposed are likely to prejudice the interests of the management company or trustee, as the case may be, the Commission shall give the management company or trustee an opportunity to be heard.
- (5) An application for an approval under subsection (2) shall be made to the Commission in accordance with such procedure or other requirement as may be specified by the Commission.
- (6) A trustee or a management company who contravenes subsection (1) commits an offence.

Persons who can be trustees

- 290.** (1) A person shall not be eligible to be appointed or to act as trustee for unit holders without the approval of the Commission if the person—
- (a) is a shareholder who beneficially holds shares in the management company;
 - (b) is beneficially entitled to monies owed by the management company to it; or

- (c) is a related corporation of–
 - (i) the persons referred to in paragraphs (a) and (b); or
 - (ii) the management company.
- (2) An application for approval by a person referred to in subsection (1) shall be made in accordance with such procedure or other requirement as may be specified by the Commission.
- (3) Notwithstanding the provisions of subsection (1), a person is not prevented from being appointed or from acting as trustee by reason only that–
 - (a) the monies that the management company owes to the trustee or any related corporation of the trustee are monies to which the trustee or any related corporation of the trustee is entitled to as trustee, in accordance with the provisions or covenants of the deed; or
 - (b) the trustee or a related corporation of the trustee, despite being beneficial owners in the shares of the management company, do not have the right to exercise more than one-twentieth of the voting power at any general meeting of the management company.
- (4) The Commission may, subject to such terms and conditions as it thinks fit, approve a person to be appointed or to act as trustee where an application has been made to the Commission pursuant to subsection (1).
- (5) In exercising its discretion under subsection (4), the Commission shall have regard to–
 - (a) the interests of holders of any unit; and
 - (b) the ability of the trustee to safeguard the interests of unit holders as required by the provisions and covenants of the deed and the provisions of this Act.
- (6) The Commission may revoke an approval granted under subsection (4) where the trustee has failed to comply with any term or condition imposed under subsection (4) or has contravened any provision of this Act.
- (7) A trustee who–
 - (a) contravenes subsection (1);
 - (b) contravenes a term or condition imposed by the Commission under subsection (4),

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

Existing trustee to continue to act until new trustee takes office

291. Notwithstanding section 43 of the Trustee Act 1949 or any provision or covenant in the deed, an existing trustee shall continue to act as trustee until a new trustee is appointed and has taken office as trustee.

Replacement of trustee

292. (1) Where no provision has been made in the deed for the appointment of a successor to a retiring trustee, the management company shall, within one month after becoming aware of the intention of the trustee to retire, appoint as successor to the retiring trustee a trustee who has been approved by the Commission under section 289 and who is a person eligible to be appointed or to act as trustee under section 290.

(2) The Commission may, on the application of the management company, a unit holder or of its own accord—

(a) appoint, as trustee, a person who is eligible to be appointed or to act as trustee under section 290 if a trustee has not been validly appointed or the trustee has ceased to exist; or

(b) terminate the appointment of an existing trustee and appoint in his place, as trustee, a person who is eligible to be appointed or to act as trustee under section 290 if—

(i) the existing trustee is not eligible to be appointed or to act as trustee under section 290;

(ii) the existing trustee fails or refuses to act in accordance with the provisions or covenants of the deed or the provisions of this Act;

(iii) a receiver is appointed over the whole or a substantial part of the assets or undertaking of the existing trustee and has not ceased to act under that appointment, or a petition is presented for the winding up of the existing trustee (other than for the purpose of and followed by a reconstruction, unless during or following such reconstruction the existing trustee becomes or is declared to be insolvent); or

(iv) the trustee is under investigation for conduct that contravenes the Trust Companies Act 1949, the Trustee Act 1949, the Companies Act 1965 or any securities law.

(3) Except for subparagraph 2(a)(ii), a trustee shall be given the opportunity to be heard before the Commission takes any action under subsection (2).

(4) A management company who contravenes subsection (1) commits an offence.

Registration of deed

- 293.** (1) The management company shall submit the deed referred to in paragraph 288(1)(b) to the Commission for registration and such deed shall not have effect unless so registered.
- (2) The Commission may, on an application for registration of a deed–
- (a) register the deed;
 - (b) register the deed with such revisions or subject to such terms and conditions as it thinks fit; or
 - (c) refuse to register the deed.
- (3) An application under subsection (2) shall be made in accordance with such procedure or other requirement as may be specified by the Commission.
- (4) The Commission shall refuse to register a deed under paragraph (2)(c) if–
- (a) it appears to the Commission that the deed does not comply with the requirements of this Act or any other requirement as may be specified by the Commission;
 - (b) the making available of, offer for subscription or purchase of, or invitation to subscribe for or purchase, a unit to which the deed relates has not been approved by the Commission under section 212; or
 - (c) the trustee referred to in paragraph 288(1)(a) has not been appointed for the purposes of the deed.
- (5) Subject to subsection (4), the Commission shall register a deed together with an application for its registration.

Contents of deed

- 294.** A deed shall contain such provisions, covenants, requirements, information and particulars as may be specified by the Commission.

Modification of deed through supplementary deed

- 295.** (1) A modification may be made to a deed only by a deed expressed to be supplementary to the principal deed and submitted by the management company to the Commission for registration, and a supplementary deed shall not have effect unless it has been so registered.
- (2) The Commission may, on an application for registration of a supplementary deed–
- (a) register the supplementary deed;

- (b) register the supplementary deed with such revisions or subject to such terms and conditions as it thinks fit; or
 - (c) refuse to register the supplementary deed.
- (3) The Commission shall refuse to register a supplementary deed under paragraph (2)(c) if it appears to the Commission that the supplementary deed does not comply with the requirements of this Act or any other requirement as may be specified by the Commission.
- (4) The supplementary deed submitted for registration shall be accompanied by–
 - (a) a resolution of not less than two-thirds of all unit holders at a unit holders’ meeting duly convened and held according to the provisions and covenants of the deed sanctioning the proposed modification to the deed; or
 - (b) a statement from the trustee and the management company certifying that in their opinion such modification, alteration or addition does not materially prejudice the interests of unit holders and does not operate to release the trustee or the management company from any responsibility to the unit holders.
- (5) The Commission may require the management company, in any application for registration of a supplementary deed, to obtain a resolution under paragraph (4)(a) if in the Commission’s opinion any modification, alteration or addition to the deed may prejudice the interests of unit holders.
- (6) A supplementary deed proposing any modification, alteration or addition to the deed which–
 - (a) would increase the maximum service charge or annual management fee payable to the management company, whether payment is made out of the property or assets of the unit trust scheme or prescribed investment scheme or otherwise; or
 - (b) would increase the maximum payment allowed to be made out of the property or assets of the unit trust scheme or prescribed investment scheme to the trustee by way of remuneration for the trustee’s services,shall be submitted for registration accompanied by a resolution under paragraph (4)(a).
- (7) A supplementary deed upon registration under this section shall be deemed to be part of the deed to which it relates for the purposes of this Act.
- (8) A person who contravenes subsection (1) commits an offence.

Deed to be lodged with Commission

296. The management company shall lodge a deed with the Commission within seven days after the deed has been registered under section 293 or 295.

Duties of a management company

297. (1) A management company who is required to enter into a deed under section 288–
- (a) shall carry on and manage its business and the unit trust scheme or prescribed investment scheme, as the case may be, in a proper, diligent and efficient manner;
 - (b) shall carry on and manage its business in accordance with the provisions and covenants of the deed, the provisions of this Act, any securities law and any regulations made thereunder;
 - (c) shall provide a copy of the deed to a unit holder or a trustee upon request for a copy of the deed and on payment of such reasonable sum as may be imposed by the management company;
 - (d) shall make all financial or other records of a unit trust scheme or a prescribed investment scheme available for inspection by–
 - (i) a trustee;
 - (ii) an officer or employee of the trustee authorised by the trustee to carry out the inspection; or
 - (iii) an approved company auditor appointed by the trustee to carry out the inspection,and give such persons carrying out the inspection any information, explanation or other assistance that they may require in relation to those records; and
 - (e) shall make a copy of the deed available for inspection without charge to any member of the public.
- (2) Except as may be prescribed by way of regulations made under section 378, a management company shall not act as principal in the sale and purchase of securities, property and assets to and from the unit trust scheme or prescribed investment scheme.
- (3) A management company shall not make improper use of its position in managing the unit trust scheme or prescribed investment scheme to gain, directly or indirectly, an advantage for itself or for any other person or to cause detriment to the interests of unit holders of such unit trust scheme or prescribed investment scheme.
- (4) A management company shall not, without the prior approval of the trustees, invest any monies available under the deed in any securities, property and assets in which the management company or any officer of the management company has a financial interest or from which the management company or any officer of the management company derives a benefit.

- (5) A management company who contravenes paragraph (1)(a) shall not be guilty of an offence.
- (6) A management company who contravenes paragraph (1)(c), (d) or (e) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.
- (7) A management company who contravenes paragraph (1)(b) or subsection (2), (3) or (4) commits an offence.
- (8) Where a management company contravenes paragraph (1)(c), (d) or (e), the Commission may direct the management company to comply with all or any of the provisions of those paragraphs.
- (9) A management company who contravenes a direction of the Commission issued pursuant to subsection (8) commits an offence.

Duty of management company to lodge returns, etc.

298. (1) A management company—
- (a) shall lodge with the Commission—
 - (i) the annual report of a unit trust scheme or a prescribed investment scheme within two months after the end of each financial year of the unit trust scheme or prescribed investment scheme; and
 - (ii) the annual report of the management company within six months after the end of each financial year of the management company; and
 - (b) shall deliver to the Commission such other statements, documents, books and other particulars as may be required by the Commission.
- (2) Any document required to be lodged with or delivered to the Commission by a management company under subsection (1) shall be signed by at least one of the directors of the management company.
- (3) A management company shall—
- (a) send to every unit holder without charge a copy of the document referred to in subparagraph (1)(a)(i) within two months after the end of each financial year of the unit trust scheme or prescribed investment scheme; and
 - (b) where a unit holder requests for the document referred to in subparagraph (1)(a)(ii) and any additional copies of the document referred to in subparagraph (1)(a)(i), send to the unit holder the document requested for within two months after the request is received and upon payment of a reasonable sum as may be determined by the management company.

- (4) A management company shall ensure that all financial statements required to be lodged with or delivered to the Commission or required for distribution to any unit holder relating to the unit trust scheme or prescribed investment scheme shall comply with approved accounting standards.
- (5) A management company who contravenes subsection (1), (2), (3) or (4) commits an offence.

Duty of management company to replace trustee

- 299.** (1) A management company shall take all reasonable steps to replace a trustee as soon as practicable after becoming aware that–
- (a) the trustee has ceased to exist;
 - (b) the trustee has not been validly appointed;
 - (c) the trustee is not eligible to be appointed or to act as trustee under section 290;
 - (d) the trustee has failed or refused to act as trustee in accordance with the provisions or covenants of the deed or the provisions of this Act;
 - (e) a receiver is appointed over the whole or a substantial part of the assets or undertaking of the existing trustee and has not ceased to act under that appointment, or a petition is presented for the winding up of the existing trustee (other than for the purpose of and followed by a reconstruction, unless during or following such reconstruction the existing trustee becomes or is declared to be insolvent); or
 - (f) the trustee is under investigation for conduct that contravenes the Trust Companies Act 1949, the Trustee Act 1949, the Companies Act 1965 or any securities law.
- (2) A management company who contravenes subsection (1) commits an offence.

Duties of trustee

- 300.** (1) A trustee shall take custody and control of all securities, property and assets of a unit trust scheme or prescribed investment scheme and hold it in trust for the unit holders in accordance with the deed, such requirements as may be specified by the Commission, the provisions of this Act, all applicable securities laws and any regulations made thereunder.
- (2) A trustee of a deed entered into under section 288 shall–
- (a) satisfy itself that the provisions of a prospectus relating to any unit trust scheme or prescribed investment scheme do not contain any matter which is inconsistent with the provisions and covenants of the deed;

- (b) exercise reasonable diligence to ascertain whether the management company has committed any breach of the provisions or covenants of the deed or has contravened any of the provisions of this Act;
- (c) do everything in its power to ensure that the management company remedies any breach known to the trustee of the provisions or covenants of the deed or any contravention of the provisions of this Act unless the trustee is satisfied that the breach will not materially prejudice the unit holders' interests;
- (d) notify the Commission as soon as practicable of any irregularity, any breach of the provisions or covenants of the deed, any contravention of the provisions of this Act or any inconsistency between the provisions of the prospectus and the provisions or covenants of the deed as referred to in paragraph (a) which, in the trustee's opinion, may indicate that the interests of the unit holders are not being served;
- (e) give the unit holders a statement explaining the effect of any proposal that the management company submits to the unit holders before any meeting that—
 - (i) the court orders in relation to a scheme of arrangement or compromise under subsection 176(1) of the Companies Act 1965; or
 - (ii) the trustee may call under section 306; and
- (f) comply with any direction given to the trustee at a unit holders' meeting referred to in section 305, 306 or 307, unless—
 - (i) the trustee is of the opinion that the direction is inconsistent with any provision or covenant of the deed or the provisions of this Act or is otherwise objectionable; and
 - (ii) the trustee has either obtained, or is in the process of obtaining, an order from the court under section 314 to set aside or vary that direction.

(3) A trustee who contravenes subsection (1) or (2) shall not be guilty of an offence.

Duty of trustee to wind up scheme

301. (1) Where a management company is in liquidation or where, in the opinion of the trustee, a management company has ceased to carry on business or has, to the prejudice of the unit holders, failed to comply with any provision or covenant of the deed or contravened any of the provisions of this Act, the trustee shall call a meeting of the unit holders—

- (a) by sending by post a notice of the proposed meeting at least twenty-one days before the date of the proposed meeting, to each unit holder at the unit holder's last known address or, in the case of joint unit holders, to the

joint unit holder whose name stands first in the records of the management company at the joint unit holder's last known address; and

- (b) by publishing, at least twenty-one days before the date of the proposed meeting, an advertisement giving notice of the meeting in a national language national daily newspaper and in one other newspaper as may be approved by the Commission.
- (2) If at any meeting called under subsection (1), a resolution is passed by a majority in number representing at least three-fourths of the value of the units held by unit holders voting at the meeting that the unit trust scheme or prescribed investment scheme be wound up, the trustee shall apply to the court for an order confirming the resolution.
- (3) The court, on an application by the trustee, if satisfied that it is in the interest of the unit holders, may confirm the resolution and may make such orders as it thinks necessary or expedient for the winding-up of the unit trust scheme or prescribed investment scheme.
- (4) A trustee who contravenes subsection (1) or (2) shall not be guilty of an offence.

Duties of management company and trustee under general law

302. The duties of a management company and a trustee imposed on them by this Act and the deed are in addition to and not in derogation of the duties which are otherwise imposed on them by any other law.

Exemptions and indemnification of trustee from liability

- 303.** (1) Subject to subsection (2), a provision or covenant contained in a deed or a term of a contract with the unit holders shall be void in so far as the provision, covenant or term, as the case may be, would have the effect of—
- (a) exempting a trustee under the deed from liability for contravention of any provision of this Act or for breach of trust or for failure to show the degree of care and diligence required of a trustee; or
 - (b) indemnifying a trustee against liability for contravention of any provision of this Act or for breach of trust or for failure to show the degree of care and diligence required of a trustee.
- (2) Subsection (1) shall not invalidate—
- (a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or
 - (b) any provision, covenant or term enabling such a release to be given—
 - (i) on the agreement thereto of a majority of not less than three-fourths

of the holders of units voting at a meeting summoned for the purpose; and

- (ii) either with respect to specific acts or omissions or on the trustee ceasing to act.

Indemnity of trustee

- 304.** (1) A trustee is not liable for anything done or omitted to be done in accordance with a direction given to him by the unit holders at any meeting called under section 305, 306 or 307.
- (2) A trustee may, in addition to any other rights under the deed, seek reimbursement by deducting out of any monies coming into the trustee's hands from a management company, all reasonable costs incurred in explaining the effect of any proposal that the management company submits to the unit holders in the circumstances set out in paragraph 300(2)(e).

Duty of management company to call meeting of unit holders

- 305.** (1) A management company shall call for a meeting of unit holders if–
- (a) not less than fifty unit holders or one-tenth of all unit holders direct the management company to do so;
 - (b) the direction is given to the management company in writing at its registered office; and
 - (c) the purpose of the meeting is–
 - (i) to consider the most recent financial statements of the unit trust scheme or prescribed investment scheme;
 - (ii) to give to the trustee such directions as the meeting thinks proper; or
 - (iii) to consider any other matter in relation to the deed.
- (2) Where a management company is required to call a meeting under subsection (1), it shall do so within twenty-one days after the direction is given to the management company in writing at its registered office.
- (3) Where a management company is required to call a meeting under subsection (1) or pursuant to any provision or covenant of the deed, it shall give notice of the time and place of the meeting–
- (a) by sending by post a notice of the proposed meeting at least seven days before the date of the proposed meeting, to each unit holder at the unit holder's last known address or, in the case of joint unit holders, to the joint unit holder whose name stands first in the records of the management company at the joint unit holder's last known address; and

- (b) by publishing, at least fourteen days before the date of the proposed meeting, an advertisement giving notice of the meeting in a national language national daily newspaper and in one other newspaper as may be approved by the Commission.
- (4) A meeting summoned in accordance with a provision or covenant contained in a deed shall be held at the time and place specified in the notice and advertisement, being a time not later than two months after the giving of the notice and—
 - (a) be chaired by such person as is appointed in that behalf by the unit holders that are present at the meeting; or
 - (b) where no such appointment is made, be chaired by a nominee of the trustee,and shall be conducted in accordance with the deed or, if the deed makes no provision, as directed by the chairman of the meeting.
- (5) A notice of meeting posted to a unit holder shall be taken as given three days after it is posted, unless the deed provides otherwise.
- (6) A management company who contravenes subsection (1), (2) or (3) commits an offence.

Power of trustee to call a meeting

- 306.** (1) Where a management company fails to remedy any breach of the provisions or covenants of the deed or any contravention of the provisions of any securities law or regulations made thereunder when required by the trustee, the trustee may—
- (a) call a meeting of unit holders;
 - (b) inform the unit holders of the failure at the meeting;
 - (c) submit proposals for the protection of interests of unit holders; and
 - (d) ask for directions from unit holders in relation to the matter.
- (2) A trustee may appoint a person to chair a meeting of unit holders called under subsection (1) and where the trustee does not exercise this power the unit holders present at the meeting may appoint a person to chair the meeting.

Court may order a meeting of unit holders

- 307.** (1) Without limiting the effect of section 314, the court may make an order for a meeting of all or any of the unit holders to be held to give directions to the trustee.
- (2) An order made under subsection (1) may direct the trustee to—

- (a) place before the unit holders any information concerning the interests of the unit holders;
 - (b) place before the unit holders any proposal to protect the interests of the unit holders that the court directs or the trustee considers appropriate; and
 - (c) obtain the unit holders' directions concerning the protection of the interests of the unit holders.
- (3) The meeting shall be held and be conducted in such manner as the court may direct.
- (4) A trustee may appoint a person to chair the meeting and where the trustee does not exercise this power, the unit holders present at the meeting may appoint a person to chair the meeting.

Register of unit holders

- 308.** (1) Every management company shall keep a register of unit holders and enter into the register—
- (a) in the case of a unit holder who is an individual, the name, address, the number of the identity card issued under the National Registration Act 1959 [Act 78], if any, of that individual; or
 - (b) in the case of a unit holder that is a corporation, the name, registered address and registration number of that corporation, if applicable.
- (2) The management company shall enter into the register—
- (a) the number of units held by each unit holder;
 - (b) the date on which the name of each person was entered in the register as a unit holder;
 - (c) the date on which any person ceased to be a unit holder; and
 - (d) any other relevant information or particulars of the unit holder,
- for a period of seven years.
- (3) Notwithstanding anything in subsections (1) and (2), a management company may keep the names and particulars relating to persons who have ceased to be unit holders of the unit trust scheme or prescribed investment scheme in a separate register.
- (4) The register of unit holders shall be *prima facie* evidence of any matters inserted therein in accordance with the provisions of this Act.

- (5) Where a unit trust scheme or prescribed investment scheme has more than fifty unit holders, the management company shall, unless the register of unit holders is in such a form as to constitute in itself an index, keep an index of the names of the unit holders in a convenient form and shall, within fourteen days after the date on which any alteration is made in the register of unit holders, make any necessary alteration in the index.
- (6) The index shall, in respect of each unit holder, contain sufficient indication to enable the account of that unit holder in the register to be readily found.
- (7) A person who contravenes subsection (1), (2), (5) or (6) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.

Where register is to be kept

- 309.** (1) A register of unit holders and the index shall be kept at the registered office of a management company in Malaysia.
- (2) A person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.

Closure and inspection of register

- 310.** (1) A management company may, on giving not less than fourteen days' notice to the Commission, close the register of unit holders at any time, but no part of the register shall be closed for more than thirty days in the aggregate in any calendar year.
- (2) Any unit holder may request the management company to furnish him with an extract from the register in so far as it relates to his name, address, number of units held by him and amounts paid on those units, and the management company shall, on payment in advance of a reasonable fee as it may require, cause any extract so requested to be sent to that person within twenty-one days or within a period which the Commission considers reasonable in the circumstances commencing on the day after the date on which the request is received by the management company.
- (3) A management company who contravenes subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.

Power of court to rectify register

- 311.** (1) Any unit holder, trustee or other person aggrieved by the inclusion or exclusion, or the manner of inclusion or exclusion, of any name in the register may apply to the court for the rectification of the register, and the court may refuse the application or may order the rectification of the register and the payment by the management company of any damages sustained by any party to the application.
- (2) The court may, on an application under subsection (1), decide—

- (a) on any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between unit holders or alleged unit holders, or between registered unit holders or alleged registered unit holders, on the one part and the management company on the other part; and
- (b) generally, any question necessary or expedient to be decided for the rectification of the register.

Branch register

- 312.** (1) Notwithstanding the provisions of section 308, a management company may cause to be kept in any place outside Malaysia a branch register of unit holders of a unit trust scheme or prescribed investment scheme which shall be deemed to be part of the register of unit holders.
- (2) A management company shall deliver to the Commission a notice of the location of the office where any branch register is kept and of any change in its location and, if the branch office is permanently closed, of its closure, and any such notice shall be delivered within one month after the opening of the office or of the change or closure, as the case may be.
- (3) A branch register shall be kept in the same manner in which the principal register is required by this Act to be kept.
- (4) A management company shall transmit to the office at which its principal register is kept a copy of every entry in its branch register as soon as may be practicable after the entry is made, and shall cause to be kept at that office, duly entered up from time to time, a copy of its branch register, which shall for all purposes of this Act be deemed to be part of the principal register.
- (5) A management company may close a branch register and thereupon all entries in that register shall be transferred to some other branch register or to the principal register.
- (6) A person who contravenes subsection (2), (3) or (4) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.

Rights of trustee, executor, administrator in relation to a deceased unit holder

- 313.** (1) A trustee, executor or administrator of the estate of any deceased person who was registered or beneficially entitled to be registered as a unit holder of any unit trust scheme or prescribed investment scheme may become registered as the unit holder in respect of the holdings of the deceased person as trustee, executor or administrator of that estate and shall, in respect of such holdings, be entitled to the same rights as he would have been entitled to if the holdings of the deceased person had remained registered in the name of the deceased person.
- (2) A unit held by a trustee, executor or administrator of a deceased person in respect of a particular trust may, with the consent of the management company, be

marked in the register or branch register in such a way as to identify it as being held in respect of the trust.

- (3) Except as provided in this section, no notice of any trust expressed, implied or constructive shall be entered on a register or branch register, and no liability shall be affected by anything done in pursuance of subsection (1) or (2) or pursuant to any law outside Malaysia which corresponds to the provisions of this section.

Power of court to make orders

- 314.** (1) A court may make any order that it considers appropriate to protect the interests of existing or prospective unit holders.
- (2) If a trustee applies to a court for any direction in relation to the performance of the trustee's functions or to determine any question in relation to the interests of unit holders, the court may give any direction or make any declaration or determination in relation to the matter that the court considers appropriate, including such ancillary or consequential orders as may be necessary.

Non-application of Division 5 of Part VI

- 315.** (1) The provisions of Division 5 of Part VI shall not apply to an issue, offer or invitation made to a person or a class of persons, or made in respect of a unit trust scheme or prescribed investment scheme or a class of unit trust schemes or prescribed investment schemes as the Minister may, on the recommendation of the Commission, prescribe by order published in the *Gazette*.
- (2) A prescription made under subsection (1) may specify the provisions of Division 5 of Part VI to which an issue, offer or invitation shall not apply.
 - (3) The Minister, on the recommendation of the Commission, may from time to time by order published in the *Gazette*, vary, delete, add to, substitute for, or otherwise amend the prescription made under subsection (1) and upon such publication, the prescription as varied, deleted, added to, substituted for or otherwise amended, shall come into full force and effect and shall be deemed to be an integral part of this Act as from the date of such publication or such later date as may be specified in the order.

DIVISION 6

Islamic Securities

Prescription by Minister in respect of Islamic securities, etc.

- 316.** (1) This Division applies to a person who proposes to make available, offer for subscription or purchase, or issue an invitation to subscribe for or purchase, Islamic securities.
- (2) Where the Minister has made a prescription under section 5 in respect of Islamic

securities, the Minister may make such modifications in the prescription on the usage of expressions in the securities laws as may be necessary to give full effect to the principles of *Shariah* in respect of such Islamic securities.

- (3) The Commission may specify in guidelines made under section 377 on the following:
- (a) any model agreement or documentation relating to a transaction or arrangement in respect of Islamic securities;
 - (b) the duties and responsibilities of the different parties involved in a transaction or arrangement in respect of Islamic securities; and
 - (c) any other matter as may be deemed appropriate,

in giving full effect to the principles of *Shariah* in relation to a transaction in respect of Islamic securities.