

## PART VIII

### SELF-REGULATORY ORGANISATIONS

#### Interpretation

**322.** For the purposes of this Part, “chief executive”, “director” and “officer” includes any person occupying the position or performing the functions of chief executive, director and officer by whatever name called and “chief executive”, “director” and “officer” shall have the same meaning as in subsection 2(1).

#### Recognition of a self-regulatory organisation

**323.** (1) The Commission may, with the concurrence of the Minister, where it thinks appropriate in the public interest or for the protection of investors by notice published in the *Gazette*, declare a person to be a recognised self-regulatory organisation, subject to such terms and conditions as the Commission thinks fit, if it is satisfied that—

- (a) the person in discharging its obligation under section 324 will not act contrary to the public interest and in particular the interest of investors;
- (b) the person shall be able to take appropriate action against its members and any person to whom the rules apply to;
- (c) the person has sufficient financial, human and other resources to carry out its functions;
- (d) the person is fit and proper and satisfies the criteria or standards referred to in section 64, or any rules of the stock exchange or futures exchange, as the case may be;
- (e) the person is managed by officers who are fit and proper and who satisfy the criteria or standards referred to in section 65, or any rules of the stock exchange or futures exchange or any applicable guidelines, as the case may be;
- (f) the person has competent personnel for the carrying out of its functions; and
- (g) the rules of the person make satisfactory provision—
  - (i) to promote investor protection;
  - (ii) to promote fair treatment of its members and any person who applies for membership;
  - (iii) to exclude a person who is not fit and proper from being its member or being appointed as its chief executive, director or officer;

- (iv) to promote proper regulation and supervision of its members;
  - (v) to promote appropriate standards of conduct of its members;
  - (vi) to manage any conflict of interest that may arise between its interest and the interest referred to in subsection 324(1);
  - (vii) to ensure that there is a fair representation of members in its governing body;
  - (viii) to ensure that its members and officers duly comply with the securities laws, regulations and guidelines issued by the Commission and where relevant, the rules of the stock exchange, futures exchange, approved clearing house or central depository;
  - (ix) to prevent the usage of any information by its members or officers that may result in such member or officer making an unfair gain;
  - (x) for the expulsion, suspension, disciplining or sanctioning of a member in the event a member contravenes the securities laws, regulations and guidelines issued by the Commission and where relevant, the rules of the stock exchange, futures exchange, approved clearing house or central depository; and
  - (xi) to allow an aggrieved member to appeal against any decision of the recognised self-regulatory organisation.
- (2) The Commission may, in declaring a person to be a recognised self-regulatory organisation, require such person to provide any information to the Commission as the Commission considers necessary.
- (3) A person who—
- (a) with intent to deceive, makes or furnishes; or
  - (b) knowingly authorises or permits the making or furnishing of,

any false or misleading statement or report with respect to the information submitted to the Commission referred to in subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringggit or to imprisonment for a term not exceeding ten years or to both.

### **Duties of a recognised self-regulatory organisation**

- 324.** (1) A recognised self-regulatory organisation shall ensure that in exercising any of its powers or in carrying out any of its functions, such power or function shall be exercised or carried out in the public interest having particular regard to the need for the protection of investors.
- (2) A recognised self-regulatory organisation shall immediately notify the Commission if it becomes aware of—

- (a) any matter which adversely affects or is likely to adversely affect the interests of investors; and
  - (b) any contravention by its members of any securities laws.
- (3) Without prejudice to subsection (2), when a recognised self-regulatory organisation expels, or suspends any member, or otherwise disciplines any of its members, it shall, within seven days, give to the Commission in writing the following particulars:
  - (a) the name of the member;
  - (b) the reason for and the nature of the action taken;
  - (c) the amount of the fine;
  - (d) the period of suspension, if any; and
  - (e) any other disciplinary action taken.
- (4) A recognised self-regulatory organisation shall not make a decision under its rules that adversely affects the rights of a person unless the recognised self-regulatory organisation has given the affected person an opportunity to make representations to the recognised self-regulatory organisation about the matter.
- (5) Notwithstanding the provisions of subsection (4), where the recognised self-regulatory organisation considers that any delay in making the decision is likely to prejudice public interest or necessary for the protection of investors, the recognised self-regulatory organisation may make a decision without giving an opportunity to be heard.

### **Rules of a recognised self-regulatory organisation**

- 325.** (1) No amendments to the rules of a recognised self-regulatory organisation shall have effect unless it has been approved by the Commission under subsection (4).
- (2) Where a recognised self-regulatory organisation proposes to make any amendment to its rules, the recognised self-regulatory organisation shall submit to the Commission—
- (a) the text of the proposed amendment; and
  - (b) an explanation of the purpose of the proposed amendment.
- (3) The Commission shall, within six weeks after the receipt of any proposed amendment under subsection (2), give notice in writing to the recognised self-regulatory organisation that it approves or disapproves of the proposed amendment or any part of the proposed amendment, as the case may be.
- (4) The Commission may, by notice in writing, declare any class of rules of a recognised self-regulatory organisation to be a class of rules whose amendments do not require the approval of the Commission under subsection (3), and accordingly,

any amendment to the rules of the recognised self-regulatory organisation that belongs to that class shall, subject to subsections (5) and (6), have effect notwithstanding that they have not been so approved under subsection (3).

- (5) Where the Commission is of the opinion that any amendment to the rules of a recognised self-regulatory organisation made under subsection (4) does not fall within the class of rules declared by the Commission under that subsection as not requiring its approval, the Commission may, after consultation with the recognised self-regulatory organisation, require the recognised self-regulatory organisation to submit such amendment for its approval under subsection (3).
- (6) Notwithstanding the provisions of this section, the Commission may, from time to time, after consultation with the recognised self-regulatory organisation, by written notice require the recognised self-regulatory organisation to amend or supplement any of its rules in such manner and within such period as may be specified in the notice.
- (7) A recognised self-regulatory organisation which contravenes subsection (2) or which contravenes a requirement made under subsection (5) or a written notice made under subsection (6) commits an offence.

### **Appointment of directors of a recognised self-regulatory organisation**

- 326.** (1) No appointment, election or nomination of a director or chief executive of a recognised self-regulatory organisation can be made without the prior approval of the Commission.
- (2) The recognised self-regulatory organisation shall ensure that at least one-third of the number of directors on its board shall be public interest directors in accordance with such criteria as may be specified by the Commission.

### **Powers to issue directions to a recognised self-regulatory organisation**

- 327.** (1) Where the Commission is satisfied that—
- (a) a conflict exists or may come into existence between the interest of a recognised self-regulatory organisation or its members and the interest of the proper performance of the functions or duties conferred by this Act, its rules or any guidelines issued by the Commission pursuant to section 377;
  - (b) such a conflict of interest has occurred or has existed in circumstances that make it likely that the conflict of interest will continue or be repeated; or
  - (c) the recognised self-regulatory organisation has failed to carry out its functions or discharge its duties under subsection 324(1) or its rules or any guidelines issued by the Commission pursuant to section 377,

the Commission may serve a written notice on the recognised self-regulatory organisation stating the reasons in support of the ground for the notice and

direct the recognised self-regulatory organisation to forthwith take such steps as are specified in the notice, including steps in relation to any of its affairs, business or property for the purposes of managing the conflict of interest or the matters occasioning the conflict of interest and the satisfactory carrying out of its functions and satisfactory discharge of its duties.

- (2) A notice served under subsection (1) shall take effect immediately.
- (3) A recognised self-regulatory organisation that has been served with a notice under subsection (1) shall not without reasonable excuse, fail to comply with the notice.
- (4) A recognised self-regulatory organisation that has been served with a notice under subsection (1) may appeal against the notice to the Commission not later than fourteen days after the date of service of the notice or such longer period if any, as the Commission may specify in the notice, but the notice shall take effect immediately notwithstanding that the appeal has been or may be made under this subsection.
- (5) Without limiting the generality of subsection (1), the Commission may issue any other direction to a recognised self-regulatory organisation where the Commission thinks necessary in the public interest or for the protection of investors.

### **Withdrawal of recognition**

- 328.** (1) The Commission may, with the concurrence of the Minister, withdraw a recognition given under subsection 323(1) where—
- (a) the recognised self-regulatory organisation has failed to commence operations within six months from the date published in the *Gazette* under subsection 323(1);
  - (b) the Commission is not satisfied that the recognised self-regulatory organisation is properly performing or is able to perform the functions or duties under its rules or any guidelines issued by the Commission pursuant to section 377;
  - (c) the recognised self-regulatory organisation has breached any term and condition imposed under subsection 323(1);
  - (d) the recognised self-regulatory organisation is in breach of any provisions of the securities laws or any guidelines issued pursuant to section 377 or has failed to comply with any direction by the Commission and where relevant, the rules of the stock exchange, futures exchange, approved clearing house or central depository;
  - (e) the recognised self-regulatory organisation is being wound up or otherwise dissolved;
  - (f) a judgement debt against the recognised self-regulatory organisation has not been satisfied in whole or in part;

- (g) a receiver, a receiver and manager, or equivalent person has been appointed, in relation to or any property of the recognised self-regulatory organisation;
  - (h) the recognised self-regulatory organisation—
    - (i) on its own accord has applied to the Commission to cease operating as a recognised self-regulatory organisation; or
    - (ii) has been determined by the Commission to have ceased operating as a recognised self-regulatory organisation;
  - (i) any information provided for the purposes of section 323 was false or misleading in a material particular; or
  - (j) the recognised self-regulatory organisation has contravened any direction of the Commission issued under section 327.
- (2) A recognition given under subsection 323(1) shall not be withdrawn unless the Commission has notified the recognised self-regulatory organisation of its intention and the reasons for the Commission's action, and give the recognised self-regulatory organisation an opportunity to make representations to the Commission.

### **Protection for a recognised self-regulatory organisation**

**329.** A recognised self-regulatory organisation, an officer or employee of a recognised self-regulatory organisation or a member of a committee of a recognised self-regulatory organisation shall not be liable for any loss sustained by or damage caused to any person as a result of anything done or omitted by them in the performance in good faith of their powers, functions and duties in connection with the regulatory or supervisory functions of the recognised self-regulatory organisation.

### **Accounts and reports in respect of a recognised self-regulatory organisation**

- 330.** (1) The provisions of Subdivision 6 of Division 4 of Part III shall apply to the appointment, removal and resignation of an auditor and the audit of a recognised self-regulatory organisation's accounts.
- (2) Within three months after the end of each financial year, a recognised self-regulatory organisation shall submit to the Commission a report on the extent to which it has complied with the terms and conditions imposed under subsection 323(1), the requirements imposed on it under this Part and its rules or any guidelines issued by the Commission pursuant to section 377.
- (3) The Commission shall forthwith send a copy of the report referred to under subsection (2) to the Minister.
- (4) Upon receipt of the report under subsection (2), the Commission may at any time if it deems it necessary to do so—

- (a) conduct an audit on the recognised self-regulatory organisation;
  - (b) appoint any independent person to assist the Commission in an audit; and
  - (c) charge the costs of carrying out such audit to the recognised self-regulatory organisation.
- (5) The Commission shall as soon as practicable submit to the Minister a copy of the report of the audit conducted by the Commission under subsection (4).

### **Provision of assistance to Commission**

- 331.** (1) A recognised self-regulatory organisation shall provide such assistance to the Commission, or to a person acting on behalf of or with the authority of the Commission, as the Commission or such person reasonably requires, including the furnishing of such returns, and the provision of such information relating to the operations of the recognised self-regulatory organisation or any other information as the Commission or such person may require for the proper administration of the securities laws.
- (2) A person who refuses or fails, without lawful excuse, to assist the Commission or a person acting on behalf of, or authorised by, the Commission, in accordance with subsection (1) 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.