

SECURITIES COMMISSION (AMENDMENT) ACT 2003

An Act to amend the Securities Commission Act 1993.

ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Securities Commission (Amendment) Act 2003.

(2) Except as expressly provided otherwise, this Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*, and the Minister may appoint different dates for the coming into operation of different provisions of this Act or in respect of different classes or categories of persons or securities.

Amendment of section 2

2. The Securities Commission Act 1993 [*Act 498*], which is referred to as the "principal Act" in this Act, is amended in subsection 2(1)—

(a) by inserting after the definition of "associated person" the following definition:

“books” has the same meaning as in the Securities Industry Act 1983 [*Act 280*];

(b) by inserting before the definition of "appointed day" the following definition:

“affiliate” has the same meaning as in the Futures Industry Act 1993 [*Act 499*];

(c) by inserting after the definition of "official list" the following definition:

“participating organization” has the same meaning as in the Securities Industry Act 1983;

(d) by inserting before the definition of "participating organisation", as introduced in paragraph (c), the following definition:

“participant” has the same meaning as in the Securities Industry Act 1983;

(e) by deleting the definition of "member company";

(f) by inserting after the definition of "exchange company" the following definition:

` "exchange holding company" has the same meaning as in the Securities Industry Act 1983;'; and

(g) by inserting after the definition of "debenture" the following definition:

` "Deputy Chief Executive" means the Deputy Chief Executive appointed under paragraph 4(1)(aa);'.

Amendment of section 2E

3. Section 2E of the principal Act is amended—

(a) by substituting for the word "documents" in the shoulder note and wherever they appear, except in subsection (3), the word "books";

(b) by substituting for the word "document" wherever they appear the word "book";

(c) in subsection (1)—

(i) by substituting for the words "filing or lodging" the words "filing, lodging or submission";

(ii) by substituting for the words "this Act" the words "any of the provisions of the securities laws"; and

(iii) by inserting after the words "lodged with" the words "or submitted to";

(d) in subsection (2), by inserting after the word "fee" the words ", if any,";

(e) in subsection (3)—

(i) by inserting after the words "subsection (1)" the words ", or such other person as the Commission may allow,"; and

(ii) by substituting for the words "documents with" the words "books with or submit books to";

(f) in subsection (4)—

(i) by substituting for the words "filed or lodged" the words "filed, lodged or submitted";

(ii) by substituting for the words "filing or lodgement" the words "filing, lodgement or submission"; and

(iii) by substituting for the words "prescribed by

regulations or approved" the words "specified";

- (g) in subsection (5), by substituting for the words "filed or lodged" the words "filed, lodged or submitted";
- (h) in subsection (6)—
 - (i) by substituting for the words "filed or lodged" the words "filed, lodged or submitted"; and
 - (ii) by substituting for the words "prescribed by regulations or approved" the words "specified";
- (i) in subsection (7), by inserting after the words "lodged with" the words "submitted to"; and
- (j) in subsection (8), by inserting after the words "lodged with" the words "or submitted to".

New sections 2F, 2G and 2H

4. Part I of the principal Act is amended by inserting after section 2E the following sections:

"Power of Commission to specify form and manner of keeping or maintaining books

2F. (1) Where under any of the provisions of the securities laws any person is required, or power is given to the Commission to require any person, to keep or maintain any book, the Commission may specify the form and manner in which such book is to be kept or maintained.

(2) The person referred to in subsection (1) shall take all reasonable precautions, including such precautions as may be specified by the Commission, to prevent damage to, or destruction or falsification of, such book.

Power of Commission to access books kept or maintained otherwise than in writing

2G. (1) Where under any of the provisions of the securities laws, power is given to the Commission to allow the Commission to inspect and make copies of or take extracts from any book required under any of the provisions of the securities laws to be kept or maintained, the Commission shall have access to the book and may—

- (a) obtain clear reproductions in writing; or
- (b) copy or move it to a storage or recording device.

(2) For the purposes of this section, the Commission may require any person involved in the compilation of the book, or in the storing or recording of the book in a storage or recording device, to make a statement providing an explanation of how to secure access to the book.

Power of Commission to require production, *etc.* of books kept or maintained otherwise than in writing

2H. (1) Where under any of the provisions of the securities laws, power is given to the Commission to allow the Commission to require the production of, search for, seize, take possession of, secure against interference or detain any book, the Commission may require the production of, search for, seize, take possession of, secure against interference or detain any storage or recording device in which the book is stored or recorded.

(2) For the purposes of this section, the Commission may require any person who is involved in the compilation of the book, or in the storing or recording of the book in a storage or recording device, to make a statement providing an explanation of how to secure access to the book.”.

Amendment of section 4

5. Section 4 of the principal Act is amended—

(a) in subsection (1)—

(i) by inserting after paragraph (a) the following paragraph:
“(aa) a Deputy Chief Executive;”; and

(ii) in paragraph (c), by substituting for the word “four” the word “three”;
and

(b) in subsection (3), by substituting for the words “Minister shall appoint any member of the Commission to” the words “Deputy Chief Executive shall”.

Amendment of section 15

6. Section 15 of the principal Act is amended—

(a) in subsection (1)—

(i) in paragraph (f), by substituting for the words “exchange,” the words “exchange holding company, exchange,” ; and

(ii) by substituting for paragraph (h) the following paragraph:

“(h) to promote and encourage proper conduct amongst participating organisations, participants, affiliates, depository participants and all licensed or registered persons of an exchange, clearing house and central depository, as the case may be;” and

(b) by inserting after subsection (4) the following subsection:

“(5) For the purposes of this section, “depository participants” means persons to whom section 9 of the Securities Industry (Central Depositories) Act 1991 apply.”.

Amendment of section 22

7. Subsection 22(2) of the principal Act is amended by inserting after the word “Chairman” the words “and the Deputy Chief Executive”.

Amendment of section 33D

8. Section 33D of the principal Act is amended—

(a) in subsection (1)—

(i) by deleting the words “(hereinafter referred to as the “defaulting person”)”;

(ii) by substituting for the words “defaulting person” wherever they appear, except in paragraph (b), the words “person in breach”;

(iii) by substituting for paragraph (b) the following paragraph:

“(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;”;

(iv) by deleting the word “or” at the end of paragraph (f);

(v) by substituting for the full stop at the end of paragraph (g) the words “; or”; and

(vi) by inserting after paragraph (g) the following paragraph:

“(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.”;

(b) in subsections (2) and (3), by substituting for the words "defaulting person" wherever they appear the words "person in breach"; and
(c) by inserting after subsection (3) the following subsections:

"(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) 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

(6) For the purposes of this section—

"person in breach" means a person who fails to comply with, observe or give effect to the provisions of this Part or the Code or any ruling made under subsection 33A(4), in circumstances where the person is under an obligation to do so;

"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 33A(4), in circumstances where there is an obligation to do so."

Amendment of section 45

9. Paragraph 45(3)(d) of the principal Act is amended by substituting for the words "law, any requirement of the rules or listing requirements" the words "law or any requirement of the rules".

New section 151A

10. The principal Act is amended by inserting after section 151 the following section:

"Evidential provision

151A. In any criminal or civil proceedings under the securities laws, any statement purporting to be signed by the Chairman or any other person to whom power has been delegated under section 17, which forms part of or is annexed to any letter, register, record or document, howsoever expressed, described or represented, shall, until the contrary is proved, be evidence of any fact stated therein."

Amendment of section 152

11. Subsection 152(1) of the principal Act is amended by substituting for the words "Part IV" the words "the securities laws".

Amendment of section 158

12. Section 158 of the principal Act is amended—

(a) in subsections (2) and (3), by inserting after the words "provisions of" wherever they appear the words "Part I and";

(b) in subsection (5)—

(i) by inserting after the word "under" the words "Part I and";

(ii) by substituting for paragraph (b) the following paragraph:

"(b) impose a penalty, in proportion to the severity or gravity of the failure to give effect to any written notice, circular, condition or guideline, on the person failing to give effect to such written notice, circular, condition or guideline, but in any event not exceeding one million ringgit;"

(iii) by substituting for the full stop at the end of subparagraph (f)(ii) a semicolon; and

(iv) by inserting after paragraph (f) the following paragraph:

"(g) require the person failing to give effect to any written notice, circular, condition or guideline to take such steps as the Commission may direct to remedy the failure or mitigate the effect of such failure, including making restitution to any other person aggrieved by such failure."; and

(c) by inserting after subsection (5) the following subsections:

"(6) For the purposes of paragraph (5)(g), in determining whether or not restitution is to be made by a person failing to give effect to any written notice, circular, condition or guideline, the Commission shall have regard to—

(a) the profits that have accrued to such person failing to give effect to any written notice, circular, condition or guideline; or

(b) whether one or more persons have suffered loss or have otherwise been adversely affected as a result of the failure to give effect to any written notice, circular, condition or guideline.

(7) The Commission shall give written notice to any person who has failed to give effect to any written notice, circular, condition or guideline of its intention to take action under subsection (5) and shall give such person an opportunity to be heard prior to it taking any action under subsection (5).

(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 failing to give effect to any written notice, circular, condition or guideline.”

Amendment of Schedule 1

13. Schedule 1 of the principal Act is amended—

(a) in paragraph 3, by deleting the words “which is not listed”;

(b) by substituting for paragraph 12 the following paragraph:

“12. An offer or invitation with respect to the existing securities of an unlisted corporation made to existing holders of those securities.”;

(c) in paragraph 13, by deleting the words “incorporated outside Malaysia”; and

(d) in paragraph 14, by deleting the words “arising from a capitalisation of unappropriated profits”.

Amendment of Schedule 2

14. Schedule 2 of the principal Act is amended by substituting for paragraph 21 the following paragraph:

“21. An offer or invitation made to any creditor or holder of securities of a company undergoing a scheme of arrangement or compromise under section 176 of the Companies Act 1965 or a restructuring scheme under the Pengurusan Danaharta Nasional Berhad Act 1998 [*Act 587*] which may not be renounced to any person other than a creditor or holder of securities of the company.”.

Amendment of Schedule 3

15. Schedule 3 of the principal Act is amended by substituting for paragraph 21 the following paragraph:

“21. An issue made to any creditor or holder of securities of a company undergoing a scheme of arrangement or compromise under section 176 of the Companies Act 1965 or a restructuring scheme under the Pengurusan Danaharta Nasional Berhad Act 1998 which may not be renounced to any person other than a creditor or holder of securities of the company.”.

Transitional and savings

16. (1) All actions, rules, regulations, orders, directions, notifications, approvals, decisions, guidelines and other executive acts howsoever called, made, given or done under, or in accordance with, or by virtue of the principal Act before the commencement of this Act, to the extent that they are affected by this Act shall be deemed to have been made, given or done under, or in accordance with, or by virtue of, the corresponding provisions introduced or amended by this Act, and shall continue to remain in full force and effect in relation to whom they apply until amended, revoked, repealed or rescinded under, in accordance with, or by virtue of, the corresponding provisions introduced or amended by this Act.

(2) Nothing in the principal Act or the provisions introduced or amended by this Act shall affect any person’s liability to be prosecuted or punished for offences committed under the principal Act before the commencement of this Act or any proceeding brought or sentence imposed before that day in respect of such offence.

(3) Nothing in this Act shall—

- (a) affect the validity of any securities issued before the commencement of this Act; or
- (b) apply in relation to an issuer or any other person in respect of any securities that have been issued or offered for subscription or purchase or in respect of which an invitation to subscribe for or purchase securities has been made before the commencement of this Act.

(4) If any difficulty arises with respect to the provisions introduced or amended by this Act and its transitional provisions, the Minister may, by order published in the *Gazette*, make such modifications in these provisions as may appear to him necessary for preventing anomalies.