

SECURITIES INDUSTRY ACT 1983 [ACT 280]

P.U.(A) 35/97

SECURITIES INDUSTRY (COMPENSATION FUND) REGULATIONS 1997

Incorporating latest amendments - P.U.(A) 193/98

In exercise of the powers conferred by section 83B and section 127 of the Securities Industry Act 1983, the Minister makes the following regulations [Act 280]:

1. Citation and commencement.

These regulations may be cited as the **Securities Industry (Compensation Fund) Regulations 1997** and shall come into force on 30 January 1997.

2. Interpretation.

In these Regulations, unless the context otherwise requires—

“compensation fund” or “fund” has the same meaning as is assigned to that expression under section 60 of the Act;

“Panel” means the Panel established under regulation 7 of these Regulations.

3. Administration of the fund.

(1) A compensation fund established and maintained by a stock exchange under section 61 of the Act shall be administered in the manner and under the circumstances set out in these Regulations.

(2) The committee shall administer the compensation fund on behalf of the relevant stock exchange.

4. Committee to decide on application of fund.

The committee of the relevant stock exchange may apply the compensation fund to compensate a claimant in accordance with section 72 of the Act.

5. Publication of notice.

Where a claim is made for compensation under the Act and these Regulations, the committee shall cause to be published in two daily newspapers published and circulating generally in Malaysia, one in the national language and one in English

language, a notice in the form prescribed in the Schedule, specifying a date, not being earlier than three months after the publication of the notice, on or before which claims for compensation may be made.

6. Procedure for claims.

- (1) A claim for compensation shall be made in writing to the committee of the relevant stock exchange—
 - (a) if a notice under regulation 5 has been published, on or before the date specified in the notice; or
 - (b) if no such notice has been published, within six months after the claimant becomes aware of the circumstances referred to in section 72 of the Act giving rise to the claim.
- (2) Any claim which is not made within the time limited by subregulation (1) shall, unless the committee of the relevant stock exchange otherwise determines, be barred.

7. Panel for the purpose of inquiring into claims.

- (1) Where a claim for compensation has been made under regulation 6, the committee of the relevant stock exchange shall refer the claim to the Panel for the purpose of inquiring into such claim.
- (2) The Panel shall consist of the following members to be appointed by the committee:
 - (a) a Chairman; and
 - (b) two other members.

8. Functions and powers of Panel.

- (1) The Panel may establish procedures that are fair and reasonable in its inquiry into any claim made under these Regulations.
- (2) The Panel, whether on its own or on an application by a claimant, may, require any person to provide information or produce any securities, documents or statement of evidence or summon and examine witnesses which it considers to be material in its inquiry into a claim.
- (3) The Panel shall cause all records of its proceedings to be maintained in proper form.

- (4) The Panel shall, after due inquiry into a claim for compensation, make its recommendation to the committee of the relevant stock exchange on the following matters:
 - (a) whether the claim should be allowed, partially allowed or disallowed;
 - (b) if the claim is allowed or partially allowed, to specify—
 - (i) the total amount of compensation determined to be payable;
 - (ii) the amount of costs payable thereon; and
 - (iii) the time of payment of the amounts referred to in subparagraphs (i) and (ii); and
 - (c) if the claim is disallowed or partially allowed, the reasons for the recommendation.

9. Powers of Panel where there is failure to furnish evidence.

Where any claimant is required under subregulation 8(2) to provide any information or produce any securities, documents or statements of evidence and fails to provide or produce them within one month of being requested to do so or within such longer period as the Panel may allow in any particular case, the Panel may, if it is satisfied that the information, securities, documents or statements of evidence are in the possession of or are available to the claimant, make a recommendation to the committee of the relevant stock exchange to disallow the claim.

10. Determination of claims by committee.

- (1) The committee of the relevant stock exchange shall upon receiving the recommendation of the Panel under subregulation 8(4), make a determination of a claim for compensation.
- (2) The determination referred to in subregulation (1) shall be made within a period of six months from the date that a claim is made against the fund or within such longer period as the committee may authorise in any particular case.
- (3) In making a determination under these Regulations, the committee may allow, partially allow or disallow the claim as it thinks fit.

- (4) A determination of the committee shall be in writing and may be in respect of any person or any class of persons.
- (5) Where the committee of the relevant stock exchange makes a determination, it shall forthwith serve notice in writing by registered post of its determination on the claimant.
- (6) A notice of determination shall —
 - (a) state whether the claim has been allowed, partially allowed or disallowed;
 - (b) in the case of a claim which has been allowed or partially allowed, specify the following:
 - (i) the total amount of compensation determined to be payable,
 - (ii) the amount of costs payable thereon; and
 - (iii) the time of payment of the amounts referred to in subparagraphs (i) and (ii) ; and
 - (c) in the case of a claim which has been partially allowed or disallowed, specify the reasons for the partial allowance or disallowance, as the case may be.
- (7) The committee, if it is satisfied that an event of defalcation, fraudulent misuse of monies or other property or insolvency of a member company has occurred on which to found the claim, may allow a claim notwithstanding any proceedings which may have been instituted or taken in a court of law in respect of such defalcation, fraudulent misuse of monies or other property or insolvency.

11. Claims for compensation.

- (1) The maximum amount of compensation that may be paid to a claimant under these Regulations shall be one hundred thousand ringgit per claim including the reasonable costs of and disbursements to the making and proof of the claim, less the total amount or value of all amounts or other benefits received or receivable by the claimant from a source other than the fund in deduction of the loss.

[Subs.Act P.U. (A) 193/98:s.3]

[Delete Act P.U. (A) 193/98:s.3]

- (2) Where the amount at credit in a compensation fund is insufficient to pay the total amount of all the claims which have been allowed under regulation 10 or in respect of which a decision of the Commission has been made under regulation 12, as the case may be, but is still within the maximum amount payable under subregulation (1), the amount at credit shall —
 - (a) in the case of a single claimant, be paid out to him and to the extent that the claim remains unpaid, shall be charged against future receipts of the fund and paid out of the fund when there is money available in the fund; or
 - (b) in the case of more than one claimant, be apportioned among the claimants and to the extent such claims remain unpaid, shall be charged against future receipts of the fund and paid out of the fund when there is money available in the fund.

12. Appeal to the Commission.

- (1) A person aggrieved by a determination of the committee of a relevant stock exchange under regulation 10, may within one month of the receipt of a notice of the determination, appeal to the Commission whose decision shall be final.
- (2) In determining an appeal under subregulation (1), the Commission shall have all the powers granted to the Panel and the committee of the relevant stock exchange under these Regulations.
- (3) The Commission shall determine its own procedures in hearing any appeal made to it against any determination of the committee of the relevant stock exchange.
- (4) The Commission may, in respect of an appeal under subregulation (1)—
 - (a) affirm the determination of the committee of the relevant stock exchange,
 - (b) set aside the determination of the said committee; or
 - (c) substitute for the determination of the said committee, its own determination.
- (5) The Commission shall decide on an appeal within a period of three months from the date that an appeal is made to it.

13. Stay of payment pending appeal.

Where an appeal has been made against a determination of the committee of the relevant stock exchange, the said committee shall, pending the decision of the appeal, withhold the payment of any sum directed to be paid by the determination appealed against.

14. Information to be supplied to the Commission.

As soon as practicable after the end of each financial year, the committee of the relevant stock exchange shall notify the Commission in writing of the following:

- (a)* where the fund is invested under paragraph 71(*a*) of the Act—
 - (i) the licensed institution in which the deposit is made;
 - (ii) the relevant rate or rates of interest paid on the deposit for that financial year;
 - (iii) the total amount of interest earned on the deposit in that financial year; and
 - (iv) the manner and time of payment of such interest;

- (b)* where the fund is invested under paragraph 71(*b*) of the Act—
 - (i) the securities in which the committee has invested the funds;
 - (ii) the appreciation or depreciation in value of investments held ; and
 - (iii) dividends declared and paid in respect of those securities;

- (c)* the amount to be charged to meet the expenses incurred or involved in the administration of the compensation fund;

- (d)* all other information pertaining to the investments of the fund; and

- (e)* a copy of the auditor's report made under subsection 65(3) of the Act.

SCHEDULE

SECURITIES INDUSTRY ACT 1983

SECURITIES INDUSTRY (COMPENSATION FUND) REGULATIONS 1997

(Regulation 5)

NOTICE CALLING FOR CLAIMS AGAINST COMPENSATION FUND

In the matter of.....
(name of member company)

of.....
(address)

Notice is given that all persons claiming to have suffered monetary loss from—

- (a)* a defalcation or fraudulent misuse of monies or other property, by any director, officer, employee or representative of a licensed dealer that is at that time a member company;
- (b)* insolvency of the abovementioned member company,

and the loss is suffered in respect of monies or other property that was, in connection with the member company's dealing in securities, entrusted to or received by the member company, or by any director, officer, employee or representative of the member company—

- (c)* for or on behalf of the person suffering the loss or another person; or
- (d)* because the member company was trustee of the monies or other property,

are required to deliver to the relevant stock exchange particulars of their claim, in writing, on or before19.....

Claims not received by the relevant stock exchange on or before such date shall not be admitted and no payment in respect thereof shall be made.

Dated.....19.....

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*Insert name of stock exchange.

Dated 16 January 1997.
[S (8.02) 443-20 Jld. 4; PN. (PU²) 135/IV.]

ANWAR IBRAHIM,
Minister of Finance