

**SECURITIES INDUSTRY (AMENDMENT)  
ACT 2003**

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**SECURITIES INDUSTRY (AMENDMENT)  
ACT 2003**

An Act to amend the Securities Industry Act 1983.

**ENACTED** by the Parliament of Malaysia as follows:

**Short title and commencement**

1. (1) This Act may be cited as the Securities Industry (Amendment) Act 2003.
- (2) 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 Industry Act 1983 [*Act 280*], which is referred to as the "principal Act" in this Act, is amended in section 2—
  - (a) in subsection (1)—
    - (i) by inserting after the definition of "stock market" the following definition:

` "subsidiary" has the same meaning as is assigned to that expression in section 5 of the Companies Act 1965;`;
    - (ii) by inserting after the definition of "licensed person" the following definition:

` "listed", in relation to a security or a corporation, as the case may be, means such security or corporation whose securities or any class of its securities having gained admission to be quoted on a stock market of a stock exchange;`;
    - (iii) by deleting the definition of "committee";
    - (iv) in the definition of "rules"—
      - (A) in paragraph (a)—
        - (I) by substituting for the words "members or member companies" the words "participating organizations";

- (II) in subparagraph (iii), by substituting for the words “member companies” the words “participating organizations” and by deleting the word “and” at the end of that subparagraph;
- (III) in subparagraph (iv), by inserting after the semicolon at the end of the subparagraph the word “and”; and
- (IV) by inserting after subparagraph (iv) the following subparagraph:

“(v) the listing requirements of the stock exchange;”;

(B) in paragraph (b)—

- (I) in subparagraph (iii), by deleting the word “and” at the end of the subparagraph;
- (II) in subparagraph (iv), by inserting after the semicolon at the end of the subparagraph the word “and”; and
- (III) by inserting after subparagraph (iv) the following subparagraph:

“(v) the default rules;” and

(C) by inserting after paragraph (b) the following paragraphs:

- “(c) a central depository, has the same meaning as is assigned to that expression in the Securities Industry (Central Depositories) Act 1991;
- (d) an exchange company, has the same meaning as is assigned to the expression “business rules” in the Futures Industry Act 1993;
- (e) a clearing house of an exchange company, has the same meaning as is assigned to the expression “business rules” in the Futures Industry Act 1993; and
- (f) an exchange holding company, means the memorandum and articles of association, including the rules regulating the activities and conduct of the company in its capacity as an exchange holding company;”;

- (v) by inserting after the definition of “books” the following definition:

` "business rules" has the same meaning as is assigned to that expression in the Futures Industry Act 1993 [*Act 499*];;

- (vi) in the definition of "listing requirements"—
  - (A) by substituting for the words "which maintains or provides, or proposes to maintain or provide, a stock exchange" the words "which establishes or operates, or proposes to establish or operate, a stock market of a stock exchange"; and
  - (B) in paragraph (a), by inserting after the words "stock market," the words "securities issued";
- (vii) in the definition of "board", by deleting the words ", committee of management";
- (viii) by inserting after the definition of "participant" the following definition:

` "participating organization" means any person who carries on the business of dealing in securities and is recognized as a participating organization by the rules of the stock exchange;;
- (ix) in the definition of "investment adviser"—
  - (A) in paragraph (a), by deleting the word "or" at the end of the paragraph;
  - (B) in paragraph (b), by substituting for the comma at the end of the paragraph the words "; or";
  - (C) by inserting after paragraph (b) the following paragraph:

"(ba) carries on a business of analyzing the financial circumstances of another person and provides a plan to meet that other person's financial needs and objectives, including any investment plan in securities, whether or not a fee is charged in relation thereto,";
  - (D) in paragraph (g), by inserting after the semicolon at the end of the paragraph the word "or";
  - (E) by deleting paragraph (h);
  - (F) in subparagraph (i)(iv), by deleting the word "of" after the semicolon at the end of the subparagraph; and
  - (G) by deleting paragraph (j);

(x) by inserting after the definition of "exempt fund manager" the following definition:

` "exempt investment adviser" means a person exempted under paragraph 14(2)(d);';

(xi) by inserting after the definition of "prescribed" the following definition:

` "public interest directors", in relation to a stock exchange or an exchange holding company, means persons who are appointed by the Minister under section 8D;';

(xii) in the definition of "exempt dealer"—

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

"(b) a person who is registered with a body that is approved by the Commission, and the dealing in securities by such person is in relation to arranging or offering for the sale or purchase of, any interest in a unit trust scheme, subject to any term or condition as may from time to time be specified by the Commission;"; and

(B) by substituting for paragraph (e) the following paragraph:

"(e) a licensed fund manager or an exempt fund manager whose dealing in securities is solely incidental to the conduct of his business as a fund manager or an exempt fund manager;";

(xiii) by inserting after the definition of "securities laws" the following definition:

` "settlement", in relation to a market contract, means the discharge of the rights and liabilities of the parties to the market contract whether by performance, compromise or otherwise; and includes partial settlement effected in accordance with the rules of a recognized clearing house;';

(xiv) by substituting for the definition of "participant" the following definition:

` "participant" means a person who, in accordance with the rules of a recognized clearing house, may participate in one or more of the services provided by the recognized clearing house for the clearing

and settlement of transactions or trades effected on the stock market of a stock exchange or subject to the rules of a stock exchange;’;

- (xv) by inserting after the definition of “dealing in securities” the following definition:

` “depository participant” means a person to whom the provisions of section 9 of the Securities Industry (Central Depositories) Act 1991 applies;’;

- (xvi) by inserting after the definition of “clearing house” the following definition:

` “clearing house of an exchange company” has the same meaning as is assigned to the expression “clearing house” in the Futures Industry Act 1993;’;

- (xvii) by deleting the definition of “member company”;

- (xviii) by inserting after the definition of “document” the following definition:

` “exchange company” has the same meaning as is assigned to that expression in the Futures Industry Act 1993;’;

- (xix) by inserting after the definition of “futures contract” the following definition:

` “holding company” has the same meaning as is assigned to that expression in sections 5 and 5A of the Companies Act 1965;’;

- (xx) by inserting after the definition of “exchange company” the following definition:

` “exchange holding company” means a body corporate that is the holding company of any stock exchange, recognized clearing house, exchange company, clearing house of an exchange company or central depository, and that has been approved as an exchange holding company under section 11D;’;

- (xxi) in the definition of “unit trust scheme”, by substituting for the full stop at the end of the definition a semicolon;

- (xxii) by inserting after the definition of “unit trust scheme” the following definition:

` "voting shares" has the same meaning as is assigned to that expression in section 4 of the Companies Act 1965.;

(xxiii) by substituting for the definition of "securities laws" the following definition:

` "securities laws" has the same meaning as is assigned to that expression in the Securities Commission Act 1993;';

(xxiv) in the definition of "investment representative", by substituting for the words ", not being a licensed dealer, an exempt dealer, a licensed fund manager or an exempt fund manager" the words "who is not a person referred to in subsection 14(2)"; and

(xxv) in the definition of "dealer's representative", by deleting the words "a licensed fund manager or an exempt fund manager,"; and

(b) by inserting after subsection (2) the following subsection:

"(3) Any reference in this Act to "this Act" or a "securities law" shall, unless otherwise expressly stated, include a reference to any regulation, rule, order, notification or other subsidiary legislation made under this Act or a securities law, as the case may be."

### **Amendment of section 7**

**3.** Section 7 of the principal Act is amended by substituting for subsection (1) the following subsection:

"(1) A person shall not establish, operate or maintain, or assist in establishing, operating or maintaining, or hold himself out as providing, operating or maintaining, a stock market that is not—

(a) a stock market of a stock exchange;

(b) a stock market of an exchange holding company which is itself approved as a stock exchange; or

(c) an exempt stock market."

### **Amendment of section 8**

**4.** The principal Act is amended by substituting for section 8 the following section:

#### **"Power of Minister to approve a stock exchange**

- 8.** (1) An application for the approval of a body corporate as a stock exchange may be made in writing to the Minister.
- (2) The Minister may in writing, on the recommendation of the Commission, approve a body corporate as a stock exchange, subject to any terms and conditions as he deems fit, if he is satisfied that—
- (a) the body corporate will ensure that, as far as is reasonably practicable, it will operate an orderly and fair market in relation to securities that are traded through its facilities;
  - (b) the body corporate will manage any risks associated with its business and operations prudently;
  - (c) the body corporate, in discharging its obligations under paragraph (a), will not act contrary to the public interest and in particular the interest of investors;
  - (d) the body corporate is able to take appropriate action against its participating organizations and any person to whom the rules apply for any breach of its rules;
  - (e) the rules of the body corporate make satisfactory provision—
    - (i) for an orderly and fair market in relation to the securities that are traded through its facilities;
    - (ii) for the proper regulation and supervision of its participating organizations;
    - (iii) for the exclusion of persons who are not of good character and high business integrity from being recognized as participating organizations;
    - (iv) for the expulsion, suspension or disciplining of participating organizations and any person acting on behalf of the participating organizations to whom the rules apply, for conduct that is inconsistent with just and equitable principles in the transaction of business or for a contravention of or failure to comply with the rules of the stock exchange;
    - (v) with respect to the conditions under which securities may be listed for trading in the market proposed to be conducted by the body corporate;
    - (vi) with respect to the conditions governing dealings in securities by participating organizations;

- (vii) with respect to the class or classes of securities that may be dealt in by participating organizations; and
  - (viii) generally for the carrying on of the business of the proposed stock exchange with due regard to the need for the protection of investors and public interest;
- (f) the body corporate shall at all times have sufficient financial, human and other resources to ensure the provision of—
- (i) an orderly and fair market in relation to securities that are traded through its facilities;
  - (ii) adequate and properly equipped premises for the conduct of its business;
  - (iii) competent personnel for the conduct of its business; and
  - (iv) automated systems with adequate capacity, security arrangements and facilities to meet emergencies; and
- (g) the interest of the public or the proper regulation of the market will be served by the granting of this approval.
- (3) An application for approval under subsection (1) shall be sent to the Commission, whereupon the Commission shall submit such application, together with its recommendation, to the Minister.
- (4) An applicant under subsection (1) shall provide such information as the Minister or the Commission considers necessary in relation to the application.
- (5) Without limiting the generality of the terms and conditions specified in subsection (2), the Minister may in writing, on the recommendation of the Commission, amend, revoke or impose new terms and conditions, if the Minister is satisfied that it is appropriate to do so for the protection of investors or in the public interest or for the proper regulation of the stock market.”.

### **Amendment of section 8B**

**5.** The principal Act is amended by substituting for section 8B the following section:

#### **“Withdrawal of recognition of clearing house**

**8B.** (1) The Commission may with approval of the Minister, by notice published in the *Gazette*, and by such other means as the Commission considers appropriate—

- (a) withdraw a recognition granted under section 8A to the clearing house with effect from the date specified in the notice; or
  - (b) direct the clearing house to cease to provide or operate such facilities, or to cease to provide such services, as are specified in the notice, with effect from the date specified in the notice.
- (2) The Commission shall not withdraw a recognition or issue a direction under subsection (1) unless the Commission is satisfied that it is appropriate to do so for the protection of investors or in the public interest or for the proper regulation of the clearing and settlement of transactions in securities, where any of the following circumstances occurs:
  - (a) the clearing house ceases to provide clearing house facilities;
  - (b) the clearing house is being wound up or otherwise dissolved, whether in Malaysia or elsewhere;
  - (c) the clearing house has contravened section 9A or any term or condition of its recognition or is charged with any offence under any securities laws;
  - (d) the clearing house has failed to comply with a condition, requirement or direction given under section 11 or 11L;
  - (e) any information provided for the purposes of section 8A was false or misleading in a material particular;
  - (f) a judgement debt against the clearing house has not been satisfied in whole or in part;
  - (g) a receiver, a receiver and manager, or an equivalent person has been appointed, whether in Malaysia or elsewhere, in relation to or in respect of any property of the clearing house;
  - (h) the clearing house has, whether in Malaysia or elsewhere, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation;
  - (i) the clearing house on its own accord applies to the Commission to withdraw the recognition as a clearing house granted to it and the Commission, with the approval of the Minister, deems it fit to do so.
- (3) For the purposes of paragraph (2)(a), a clearing house shall be deemed to have ceased to provide clearing house facilities if it has ceased to

provide such facilities for a period of one month unless it has obtained the prior approval of the Commission to do so.

- (4) Notwithstanding the withdrawal of a recognition or the issuance of a direction under subsection (1), the Commission may permit the clearing house to continue, on or after the date on which the withdrawal or direction is to take effect, to carry on such activities affected by the withdrawal or direction as the Commission may specify in the notice published under that subsection for the purpose of—
  - (a) closing down the operations of the clearing house or ceasing to provide the services specified in the notice; or
  - (b) protecting the investors or the public interest.
- (5) Where the Commission has granted permission to a clearing house under subsection (4), the clearing house shall not, by reason of its carrying on the activities in accordance with the permission, be regarded as having contravened section 8A.
- (6) The Commission shall not take any action under subsection (1) without giving an opportunity to be heard.”

### **New sections 8C and 8D**

**6.** The principal Act is amended by inserting after section 8B the following sections:

#### **“Effect of withdrawal of recognition of clearing house**

- 8C.** Any withdrawal of recognition or direction issued under section 8B shall not operate so as to—
- (a) avoid or affect any agreement, transaction or arrangement entered into through the clearing house facilities operated by the recognized clearing house, whether the agreement, transaction or arrangement was entered into before or, where subsection 8B(4) applies, after the withdrawal of the recognition or issuance of the direction under section 8B; or
  - (b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

#### **Appointment of directors of stock exchange and exchange holding company**

- 8D.** (1) In relation to an exchange holding company or a stock exchange other than a stock exchange that is referred to in subsection (2)—

- (a) one third of the number of directors on the board of such exchange holding company or stock exchange as the case may be, shall be appointed by the Minister, in consultation with the Commission, to be public interest directors of the exchange holding company or stock exchange and, notwithstanding the provision of any other written law, such public interest directors so appointed—

  - (i) shall have the same rights, powers, duties and obligations, liberties and privileges as any director of the exchange company or stock exchange; and
  - (ii) shall hold office for a period specified by the Minister who may at any time revoke such an appointment; and
- (b) no person other than a public interest director referred to in paragraph (a) shall accept appointment or election as a director of the exchange holding company or stock exchange unless the concurrence of the Commission is obtained.
- (2) Notwithstanding the provisions of subsection (1), in relation to the board of a stock exchange that is a subsidiary of an exchange holding company, no person shall accept appointment or election as a director of such stock exchange unless the concurrence of the Commission is obtained.
- (3) The Minister shall, in consultation with the Commission, appoint one person from amongst the public interest directors so appointed under subsection (1) to be the non-executive Chairman of the board of the exchange holding company or stock exchange, as the case may be, whose remuneration shall be determined by the board of the exchange holding company, or stock exchange, as the case may be.
- (4) Where the concurrence of the Commission is required under subsection (1) or (2), the Commission may refuse to concur if—

  - (a) any proposed director is an undischarged bankrupt, whether in Malaysia or elsewhere;
  - (b) a judgement debt against the proposed director has not been satisfied in whole or in part;
  - (c) the proposed director has, whether in Malaysia or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation;

- (d) the proposed director—

  - (i) has been convicted, whether in Malaysia or elsewhere, of an offence, involving fraud or dishonesty or the conviction for which involved a finding that he acted fraudulently or dishonestly; or
  - (ii) has been convicted of an offence under the securities laws; or
- (e) the Commission is not satisfied that the proposed director is a person of integrity and is fit and proper to be a director.
- (5) For the purposes of subsection (1)—

  - (a) the Minister may, on the recommendation of the Commission, reduce the number of public interest directors on the board of the exchange holding company or stock exchange; and
  - (b) all public interest directors appointed under subsection (1) shall retire after a term of three years but are eligible for reappointment.”.

#### **Amendment of section 9A**

- 7. Subsection 9A(4) of the principal Act is amended by inserting after the words “class of rules of a recognized clearing house” the words “, except any default rules of the clearing house,”.

#### **Amendment of section 9B**

- 8. Section 9B of the principal Act is amended—

  - (a) in paragraph (2)(a), by inserting after the words “public interest” the words “, having particular regard to the need for the protection of investors”;
  - (b) by substituting for subsection (3) the following subsection:  
  
“(3) It shall be the duty of the stock exchange to take appropriate action as may be provided for under its rules for the purpose of monitoring or securing compliance with such rules.”;
  - (c) in subsection (4), by substituting for the words “member company” wherever appearing the words “participating organization”;

- (d) in subsection (5), by substituting for the words “the membership of, any of its members or otherwise disciplines any of its members” the words “any participating organization, or otherwise disciplines any of its participating organizations”; and
- (e) by substituting for subsection (6) the following subsection:
  - “(6) A stock exchange shall at all times have sufficient financial, human and other resources to ensure the provision of—
    - (a) an orderly and fair market in relation to securities that are traded through its facilities;
    - (b) adequate and properly equipped premises for the conduct of its business;
    - (c) competent personnel for the conduct of its business; and
    - (d) automated systems with adequate capacity, security arrangements and facilities to meet emergencies.”.

#### **New sections 9D and 9E**

9. The principal Act is amended by inserting after section 9C the following sections:

##### **“Withdrawal of approval of stock exchange**

- 9D.** (1) The Minister may, on the recommendation of the Commission, by notice published in the *Gazette*, and by such other means as the Commission considers appropriate—
- (a) withdraw an approval granted under section 8 to the stock exchange, with effect from the date specified in the notice; or
  - (b) direct the stock exchange to cease to provide or operate such facilities, or to cease to provide such services, as are specified in the notice, with effect from the date specified in the notice.
- (2) The Minister shall not withdraw an approval or issue a direction under subsection (1) unless the Minister, on the recommendation of the Commission, is satisfied that it is appropriate to do so for the protection of investors, or in the public interest or for the proper regulation of markets in securities, where any of the following circumstances occurs:
- (a) the stock exchange ceases to operate its stock market;

- (b)* the stock exchange is being wound up or otherwise dissolved, whether in Malaysia or elsewhere;
  - (c)* the stock exchange has contravened any term or condition of its approval or is charged with any offence under any securities laws;
  - (d)* the stock exchange has failed to comply with a condition, requirement or direction given under section 11 or 11L;
  - (e)* any information provided for the purposes of section 8 was false or misleading in a material particular;
  - (f)* a judgement debt against the stock exchange has not been satisfied in whole or in part;
  - (g)* a receiver, a receiver and manager, or equivalent person has been appointed, whether in Malaysia or elsewhere, in relation to or in respect of any property of the stock exchange;
  - (h)* the stock exchange has, whether in Malaysia or elsewhere, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation;
  - (i)* the stock exchange on its own accord applies to the Minister to withdraw the approval as a stock exchange granted to it and the Minister, on the recommendation of the Commission, deems it fit to do so.
- (3) For the purposes of paragraph (2)(a), a stock exchange shall be deemed to have ceased to operate its stock market if it has ceased to operate its stock market for a period of one month unless it has obtained the prior approval of the Minister to do so.
- (4) Notwithstanding the withdrawal of an approval or the issuance of a direction under subsection (1), the Minister may permit the stock exchange to continue, on or after the date on which the withdrawal or direction is to take effect, to carry on such activities affected by the withdrawal or direction as the Minister may specify in the notice published under that subsection for the purpose of—
  - (a)* closing down the operations of the stock exchange or ceasing to provide the services specified in the notice; or
  - (b)* protecting the interest of investors or the public interest.
- (5) Where the Minister has granted permission to a stock exchange under subsection (4), the stock exchange shall not, by reason of its carrying

on the activities in accordance with the permission, be regarded as having contravened section 7.

- (6) The Minister shall not take any action under subsection (1) without giving an opportunity to be heard.

### **Effect of withdrawal of approval of stock exchange**

**9E.** Any withdrawal of approval or direction issued under section 9D shall not operate so as to—

- (a) avoid or affect any agreement, transaction or arrangement entered into on the stock market or operated by the stock exchange, whether the agreement, transaction or arrangement was entered into before or, where subsection 9D(4) applies, after the withdrawal of the approval or issuance of the direction under section 9D; or
- (b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.”.

### **Amendment of section 10**

**10.** Section 10 of the principal Act is amended—

- (a) in the shoulder note, by substituting for the words “Stock exchange” the words “Exchange holding company, stock exchange”;
- (b) in subsection (1)—
- (i) by substituting for the words “A stock exchange” the words “An exchange holding company, a stock exchange”; and
- (ii) by inserting after the words “operations of the” the words “exchange holding company or”;
- (c) by deleting subsection (3); and
- (d) in subsection (6), by substituting for the words “member companies, members of a stock exchange” the words “participating organizations”.

### **Amendment of section 11**

**11.** The principal Act is amended by substituting for section 11 the following section:

**"Powers concerning compliance with the provisions of this Act and rules of the stock exchange, etc.**

- 11.** (1) Where any person fails to comply with, observe, enforce or give effect to—
- (a) the rules of a stock exchange or a recognized clearing house or rules of a central depository; or
  - (b) the provisions of this Act other than the provisions of Part IX,

in circumstances where the person is under an obligation to comply with, observe, enforce or give effect to such rules or provisions, that person has committed a breach.

- (2) Without limiting the generality of subsection (1), the following persons shall be deemed to be under an obligation to comply with, observe, enforce or give effect to the rules of a stock exchange, a recognized clearing house or a central depository, to the extent to which such rules purport to apply in relation to those persons, or the provisions of this Act other than the provisions of Part IX:
- (a) an exchange holding company;
  - (b) a stock exchange;
  - (c) a central depository;
  - (d) a recognized clearing house;
  - (e) a participant;
  - (f) a participating organization;
  - (g) a depository participant;
  - (h) a corporation that has been admitted to the official list of a stock exchange and has not been removed from that official list and a person associated with such corporation;
  - (i) a person to whom the rules of a stock exchange, a recognized clearing house or a central depository, as the case may be, apply;
  - (j) the directors or officers of the persons referred to in paragraphs (a) to (h);



- (a) the Commission from taking any of the actions that it is empowered to take under this Act or any securities laws against the person in breach; and
- (b) the exchange holding company, stock exchange, recognized clearing house or central depository, as the case may be, from taking any action under the relevant rules.”.

### **Amendment of section 11B**

- 12.** Subsection 11B(1) of the principal Act is amended by inserting after the words “section 9C” the words “, 9D”.

### **New sections 11C to 11P**

- 13.** The principal Act is amended by inserting after section 11B the following sections:

#### **“Exchange holding company**

- 11C.** No body corporate shall be an exchange holding company or a holding company of an exchange holding company, unless the body corporate has been approved as an exchange holding company under section 11D.

#### **Power of Minister to approve an exchange holding company**

- 11D.** (1) An application for approval of a body corporate as an exchange holding company may be made in writing to the Minister.
- (2) The Minister may in writing, on the recommendation of the Commission, approve a body corporate as an exchange holding company, subject to any terms and conditions as he deems fit, if he is satisfied that it is appropriate to do so—
- (a) for the protection of investors;
  - (b) in the public interest; or
  - (c) for the proper regulation of a stock market of a stock exchange.
- (3) An application for approval under subsection (1) shall be sent to the Commission, whereupon the Commission shall submit such application, together with its recommendation, to the Minister.

- (4) An applicant under subsection (1) shall provide such information as the Minister or the Commission considers necessary in relation to the application.
- (5) The Minister may, on the recommendation of the Commission, impose different conditions or restrictions or give different directions with respect to different applications for approval as an exchange holding company.
- (6) For the avoidance of doubt—
  - (a) to the extent that an exchange holding company would be holding itself out as, or is, providing, operating or maintaining a stock market of a stock exchange, the exchange holding company shall obtain an approval in accordance with the provisions of section 8;
  - (b) to the extent that an exchange holding company would be holding itself out as, or is, establishing or maintaining a central depository, the exchange holding company shall obtain an approval in accordance with the provisions of sections 4 and 5 of the Securities Industry (Central Depositories) Act 1991;
  - (c) to the extent that an exchange holding company is holding itself out as, or is, providing clearing and settlement services of a—
    - (i) recognized clearing house; or
    - (ii) clearing house of an exchange company, the exchange holding company shall obtain recognition in accordance with the provisions of section 8A or approval in accordance with the provisions of section 6B of the Futures Industry Act 1993, as the case may be; and
  - (d) to the extent that an exchange holding company is holding itself out as, or is, providing, operating or maintaining a futures market of an exchange company, the exchange holding company shall obtain an approval in accordance with the provisions of section 4 of the Futures Industry Act 1993.
- (7) Notwithstanding the provisions of this Act, the Securities Industry (Central Depositories) Act 1991 and the Futures Industry Act 1993, the Minister may, in his discretion, exempt the applicant from any of the requirements of section 8 of this Act or sections 4 and 5 of the Securities Industry (Central Depositories) Act 1991 or sections 4 and

6B of the Futures Industry Act 1993, as he deems fit, for the purposes of giving his approval.

- (8) Notwithstanding the provisions of section 8A, the Commission may, with the approval of the Minister, exempt the applicant from any of the requirements of section 8A, as it deems fit, for the purpose of giving recognition to an exchange holding company as a recognized clearing house.

### **Annual Regulatory Report on compliance with ongoing requirements**

- 11E.** (1) Within three months after the end of each financial year, a body corporate that has been approved as a stock exchange or an exchange holding company shall prepare and submit to the Commission a regulatory report on the extent to which it has complied with the requirements under sections 9B and 11J, and its rules, during the financial year.
- (2) The Commission shall forthwith send a copy of the regulatory report submitted under subsection (1) to the Minister.
- (3) For the purposes of subsection (1)—
- (a) the Commission may specify that either the stock exchange or the exchange holding company, or both, shall be required to submit a regulatory report; and
  - (b) the Commission and the stock exchange or the exchange holding company, as the case may be, may determine between themselves the scope and content of the regulatory report.
- (4) Upon receipt of the regulatory report under subsection (1), the Commission may at any other time it deems necessary—
- (a) conduct a regulatory audit of a body corporate that has been approved as a stock exchange or an exchange holding company, as the case may be, or of both the stock exchange and exchange holding company;
  - (b) appoint any independent person to assist the Commission in a regulatory audit conducted under this subsection; and
  - (c) charge the costs related to the conduct of the regulatory audit to the stock exchange or the exchange holding company, as the case may be, or both.

- (5) The Commission shall as soon as practicable submit to the Minister a copy of the report of the regulatory audit conducted by the Commission under subsection (4).
- (6) For the purposes of this section—
  - (a) “regulatory audit” refers to an audit on the extent to which the stock exchange or exchange holding company, as the case may be, has complied with its regulatory responsibilities, duties or functions under this Act, the rules, and any securities laws; and
  - (b) “regulatory report” is a report that is submitted under subsection (1).

### **Special report by exchange holding company about compliance with ongoing requirements**

**11F.** Notwithstanding the provisions of section 11E, the Minister may, at any time, require a body corporate that has been approved as a stock exchange, or an exchange holding company, as the case may be, to prepare and submit to the Minister a special report on the extent to which the stock exchange or the exchange holding company, as the case may be, has complied with the requirements of the securities laws and rules.

### **Withdrawal of approval of an exchange holding company**

- 11G.** (1) The Minister may, on the recommendation of the Commission, by a notice published in the *Gazette*, and by such other means as the Commission considers appropriate—
- (a) withdraw an approval granted under section 11D to an exchange holding company, with effect from the date specified in the notice; or
  - (b) direct the exchange holding company to cease to provide or operate such facilities, or provide such services, as are specified in the notice, with effect from the date specified in the notice.
- (2) The Minister shall not withdraw an approval or issue a direction under subsection (1) unless the Minister, on the recommendation of the Commission, is satisfied that it is appropriate to do so for the protection of investors, or in the public interest or for the proper regulation of the markets in securities, where any of the following circumstances occurs:
- (a) the exchange holding company ceases to be a holding company of a stock exchange or an exchange company, as the case may be;

- (b) the exchange holding company is being wound up or otherwise dissolved, whether in Malaysia or elsewhere;
  - (c) the exchange holding company has contravened any term or condition of its approval or is charged with any offence under any securities laws;
  - (d) the exchange holding company has failed to comply with a condition, requirement or direction given under section 11 or 11L;
  - (e) any information provided for the purposes of section 11D was false or misleading in a material particular; or
  - (f) an exchange holding company on its own accord applies to the Minister to withdraw the approval as an exchange holding company granted to it and the Minister, on the recommendation of the Commission, deems it fit to do so.
- (3) Notwithstanding the withdrawal of an approval or the issuance of a direction under subsection (1) the Minister may permit the exchange holding company to continue, on or after the date on which the withdrawal or direction is to take effect, to carry on such activities affected by the withdrawal or direction as the Minister may specify in the notice published under that subsection for the purposes of—
  - (a) closing down the operations of the exchange holding company or ceasing to provide the services specified in the notice; or
  - (b) protecting investors or the public interest.
- (4) Where the Minister has granted permission to an exchange holding company under subsection (3), the exchange holding company shall not, by reason of its carrying on the activities in accordance with the permission, be regarded as having contravened sections 7, 8A and 11C of this Act, sections 3 and 6A of the Futures Industry Act 1993 and section 3 of the Securities Industry (Central Depositories) Act 1991, if applicable.
- (5) The Minister shall not take any action under subsection (1) without giving an opportunity to be heard.

### **Effect of withdrawal of approval of exchange holding company**

**11H.** Any withdrawal of an approval or issuance of a direction under section 11G shall not operate so as to prejudice sections 8C and 9E of this Act, sections 7B and 7C of the Futures Industry Act 1993 and section 5B of the Securities Industry (Central Depositories) Act 1991.

## **Listing of exchange holding company on stock exchange**

- 11I.** (1) Where the approval of the Commission under section 32 of the Securities Commission Act 1993 has been granted for the securities of an exchange holding company to be listed on a relevant stock exchange, the exchange holding company shall enter into such arrangements as the Commission may require—
- (a) for dealing with possible conflicts of interest that may arise from the listing on the relevant stock exchange;
  - (b) for the purpose of ensuring the integrity of trading of the securities of the exchange holding company; and
  - (c) for the compliance with obligations as a listed corporation if the exchange holding company was to become a listed corporation,
- and the exchange holding company shall comply with such requirements.
- (2) The listing requirements of the relevant stock exchange shall be deemed to allow the Commission, instead of the relevant stock exchange, to make decisions and to take action, or to allow the Commission to require the relevant stock exchange to make decisions and to take action on the Commission's behalf on—
- (a) the admission to or removal of the exchange holding company from the official list of the relevant stock exchange;
  - (b) the stopping or suspension of the securities of the exchange holding company from being listed on the relevant stock exchange; and
  - (c) such other matters as the Commission deems fit for the purpose of subsection (1).
- (3) An arrangement under subsection (1) may provide for the exchange holding company to pay such fees to the Commission as the Commission may determine for services provided by the Commission under the arrangement, or otherwise provided under or for the purposes of this section.
- (4) Without prejudice to the provisions of section 9, the Commission may, by notice in writing—
- (a) modify the listing requirements of the relevant stock exchange for the purpose of applying to the listing for quotation or trading of the securities of the exchange holding company; and

- (b) exempt the exchange holding company from any listing requirement of the relevant stock exchange.
- (5) For the purposes of this section, the “relevant stock exchange” means the stock exchange of the exchange holding company.

### **Duties of an exchange holding company**

- 11J.** (1) It shall be the duty of an exchange holding company to ensure—
- (a) in so far as may be reasonably practicable—
    - (i) an orderly and fair market in relation to securities that are traded on the market through the facilities of the stock exchange of the exchange holding company, or through the facilities of any of its subsidiaries that is duly approved as a stock exchange, as the case may be;
    - (ii) an orderly and fair market for trading in futures contracts on the futures market through the facilities of the exchange company of the exchange holding company, or through the facilities of any of its subsidiaries that is duly approved as an exchange company, as the case may be;
    - (iii) that there are orderly dealings in securities deposited or lodged with a central depository through facilities of a central depository of the exchange holding company, or through the facilities of any of its subsidiaries that is duly approved as a central depository, as the case may be;
    - (iv) that there are orderly, clear and efficient clearing and settlement arrangements for any transaction in securities cleared or settled through the facilities of a recognized clearing house of an exchange holding company, or through the facilities of any of its subsidiaries that is duly recognized as a clearing house, as the case may be; and
    - (v) that there are orderly, clear and efficient clearing and settlement arrangements for any transaction in futures contracts cleared or settled through the facilities of a clearing house for a futures market of an exchange company, or through the facilities of any of its subsidiaries that is duly approved as a clearing house of an exchange company, as the case may be;
  - (b) the prudent risk management of its business and operations; and
  - (c) that the stock exchange, recognized clearing house, central depository, exchange company or clearing house of an exchange company, as the

case may be, comply with any lawful requirements placed on it under any securities laws and any other laws applicable to it.

- (2) In performing its duty under subsection (1) the exchange holding company shall—
  - (a) act in the public interest, having particular regard to the need for the protection of investors; and
  - (b) ensure that where its own interest or any interest that it is required to serve under any law relating to corporations conflicts with the interest referred to in paragraph (a), the latter shall prevail.
- (3) An exchange holding company shall immediately notify the Commission if it becomes aware of—
  - (a) any matter which adversely affects or is likely to adversely affect—
    - (i) the ability of the exchange holding company to meet its obligations in respect of its business as an exchange holding company, a stock exchange, a central depository, a recognized clearing house, an exchange company or a clearing house of an exchange company, as the case may be, including its ability to comply with any requirements as may be specified by the Commission, if applicable; or
    - (ii) the ability of any subsidiary of the exchange holding company to meet its obligations in respect of its business as a stock exchange, a central depository, a recognized clearing house, an exchange company or a clearing house of an exchange company, as the case may be, including the ability of any such subsidiary to comply with any requirement as may be specified by the Commission, if applicable; or
  - (b) any irregularity, breach of any provision of the securities laws, the rules of a stock exchange, a recognized clearing house or a central depository or the business rules of an exchange company or clearing house of an exchange company, or any other matter which, in the opinion of the exchange holding company, indicates or may indicate, that the financial standing or financial integrity of any of its subsidiaries or the chief executive or directors of such subsidiary, as the case may be, is in question or may reasonably be affected.
- (4) Where an exchange holding company, which itself has been approved as a stock exchange under section 8, undertakes any function of a subsidiary that is approved as a stock exchange under section 8, such exchange holding company shall enter into such arrangements with the Commission as the Commission may determine as to how the duties and

obligations of the exchange holding company and such subsidiary, under the securities laws, are satisfied.

- (5) Where an exchange holding company which itself has been approved as a recognized clearing house under section 8A, undertakes any function of a subsidiary that is approved as a recognized clearing house under section 8A, such exchange holding company shall enter into such arrangements with the Commission as the Commission may determine as to how the duties and obligations of the exchange holding company and such subsidiary, under the securities laws, are satisfied.
- (6) Where an exchange holding company, which itself has been approved as a central depository under section 5 of the Securities Industry (Central Depositories) Act 1991, undertakes any function of a subsidiary that is approved as a central depository under section 5 of the Securities Industry (Central Depositories) Act 1991, such exchange holding company shall enter into such arrangements with the Commission as the Commission may determine as to how the duties and obligations of the exchange holding company and such subsidiary, under the securities laws, are satisfied.
- (7) Where an exchange holding company, which itself has been approved as exchange company under section 4 of the Futures Industry Act 1993, undertakes any function of a subsidiary that is approved as an exchange company under section 4 of the Futures Industry Act 1993, such exchange holding company shall enter into such arrangements with the Commission as the Commission may determine as to how the duties and obligations of the exchange holding company and such subsidiary, under the securities laws, are satisfied.
- (8) Where an exchange holding company, which itself has been approved as a clearing house under section 6B of the Futures Industry Act 1993, undertakes any function of a subsidiary that is approved as a clearing house under *Securities Industry (Amendment) 33* section 6B of the Futures Industry Act 1993, such exchange holding company shall enter into such arrangements with the Commission, as the Commission may determine, as to how the duties and obligations of the exchange holding company and such subsidiary, under the securities laws, are satisfied.
- (9) Where the duties and obligations of a stock exchange, a recognized clearing house, a central depository, an exchange company or a clearing house of an exchange company, as the case may be, are discharged in accordance with the arrangements referred to in subsection (4), (5), (6), (7) or (8), such duties and obligations shall be deemed to have been satisfied by both the exchange holding company and its subsidiary.
- (10) Where the rules of a subsidiary of an exchange holding company which is a stock exchange, a recognized clearing house, a central depository, an

exchange company or clearing house of an exchange company provide for such subsidiary to take any action, the exchange holding company shall have the power to take such action on behalf of the relevant subsidiary.

- (11) Nothing in subsection (10) shall preclude a subsidiary of an exchange holding company which is a stock exchange, a recognized clearing house, an exchange company, a clearing house of an exchange company or a central depository from itself taking any action against any person to whom its rules apply but such subsidiary shall not take any action under its rules in the event the exchange holding company takes such action pursuant to subsection (10).

### **Risk Management Committee of exchange holding company**

**11K.** An exchange holding company shall establish and maintain a committee, to be called the Risk Management Committee, to formulate policies on risk management matters relating to the activities of the exchange holding company and of its subsidiaries, and to submit such policies to the board of the exchange holding company for its consideration.

### **Power to issue directions**

**11L.** (1) Where the Commission is satisfied that—

(a) a conflict exists or may come into existence between—

(i) the interest of a body corporate that has been approved as an exchange holding company, a stock exchange, a recognized clearing house, an exchange company, a clearing house of an exchange company, a central depository, or a relevant body corporate, as the case may be; and

(ii) the interest of the proper performance of the functions or duties conferred by this Act or any other law, on the exchange holding company, stock exchange, recognized clearing house, exchange company, clearing house of an exchange company, central depository or the relevant body corporate, as the case may be; or

(b) where the Commission is satisfied that 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,

then the Commission may serve a written notice on the exchange holding company, stock exchange, recognized clearing house, exchange company,

clearing house of an exchange company, central depository, or relevant body corporate, as the case may be, stating the reasons in support of the ground or grounds for the notice and direct any of the aforementioned persons 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 remedying the conflict of interest or the matters occasioning the conflict of interest.

- (2) A notice served under subsection (1) shall take effect immediately.
- (3) A body corporate that has been served with a notice under subsection (1) shall not without reasonable excuse, fail to comply with the notice.
- (4) A body corporate that has been served with a notice under subsection (1) may appeal against the notice to the Minister 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) For the purposes of this section, "relevant body corporate" means a body corporate of which an exchange holding company is a shareholder who, either alone or with any associated person or persons, is entitled to exercise or control the exercise of more than thirty three per centum of the aggregate of the nominal amount of all voting shares in the body corporate.

### **Restriction on exchange holding company from reducing its shareholding**

**11M.** No exchange holding company shall reduce its shareholding in a stock exchange, a recognized clearing house, an exchange company, a clearing house of an exchange company or a central depository, as the case may be, to a level below seventy-five per centum, or such other percentage as may be prescribed from time to time by the Minister, of the total issued and paid-up capital in the stock exchange, recognized clearing house, exchange company, clearing house of an exchange company or a central depository as the case may be, without first obtaining the written approval of the Minister.

### **Disposal and acquisition of assets, etc.**

- 11N.** (1) Without prejudice to the provisions of section 11M, where—
- (a) an exchange holding company;
  - (b) a stock exchange;

- (c) a recognized clearing house;
- (d) an exchange company;
- (e) a clearing house of an exchange company;
- (f) a central depository; or
- (g) any other relevant body corporate as defined under subsection 11L(5),

intends to enter into an agreement or arrangement, to dispose of or acquire such assets or classes of assets of such value as may have been specified by the Commission, it shall give the Commission prior written notification of such intention.

- (2) Where the Commission makes a specification under subsection (1), it shall have regard to whether the assets referred to in the specification are integral to the operations of the exchange holding company, stock exchange, recognized clearing house, exchange company, clearing house of an exchange company, central depository, or any other relevant body corporate, as the case may be, or significant in affecting the business direction of such persons.

### **Control in shareholding of exchange holding company**

- 110.** (1) Notwithstanding section 11N, no person shall enter into any agreement or arrangement to acquire any voting shares of an exchange holding company by which, if the agreement or arrangement is carried out, he would acquire, together with any other voting shares of the exchange holding company which were then already held by him, or by him and by persons acting in concert with him, voting shares of five per centum or more of the aggregate of the nominal amount of all the voting shares in the exchange holding company, without first obtaining the prior written approval of the Minister.
- (2) An application for approval under subsection (1) shall be made by the person intending to acquire voting shares referred to therein and shall be sent to the Commission, whereupon the Commission shall submit such application, together with its recommendation to the Minister.
  - (3) The Minister may grant his approval subject to such terms and conditions, as he deems fit to impose.
  - (4) For the purposes of this section, in determining whether a person is a person acting in concert with another person, subsections 33(2) and (3) of the Securities Commission Act 1993 shall apply.

## **Power of Commission upon contravention of sections 11M, 11N and 11O**

- 11P.** (1) Notwithstanding any of the provisions in any memorandum and articles, the Companies Act 1965, or any rule of law, but subject to the provisions of this Act, where the Commission is satisfied that any person has contravened the provisions of section 11M, 11N or 11O, it may make a preliminary order in writing, imposing one or more of the following prohibitions or restrictions as may be applicable or appropriate in the circumstances of the contravention in respect of any shares which are the subject of the contravention—
- (a) prohibit the transfer of, or the carrying out of the agreement or arrangement to transfer, such voting shares, or, in the case of unissued shares, prohibit the transfer of, or the carrying out of the agreement or arrangement to transfer, the right to be issued with them;
  - (b) prohibit the exercise of any voting rights in respect of such shares;
  - (c) prohibit the issue of any further shares in right of such shares or in pursuance of any offer made to their holder; or
  - (d) except in liquidation, prohibit the payment of any sums due from the exchange holding company on such shares, whether in respect of capital or otherwise.
- (2) A preliminary order made under subsection (1) shall be served on the defaulting person as soon as is practicable, and may be publicised in such manner as the Commission deems fit, if, in the opinion of the Commission, it needs to be publicised.
- (3) A preliminary order shall be binding on the defaulting person, on any person for the time being holding the voting shares to which such order applies, and on any other person specified in the order or to whom the order is directed.
- (4) No person shall be given an opportunity to be heard before the Commission makes a preliminary order under subsection (1) against him or which affects him in any manner.
- (5) Any defaulting person against whom a preliminary order has been made, or any other person prejudicially affected by such order, may within fourteen days of the service of the order on the defaulting person, make representations in writing to the Commission applying for the setting aside of the order on the ground that he had not contravened the provisions in relation to which the order has been made, or for a modification of the order on the ground that it would be just and proper to modify it for reasons to be specified in the representations.

- (6) The Commission may, after considering the representations made under subsection (5), either confirm, revoke, or vary the preliminary order in such manner as it deems fit.
- (7) Where the Commission confirms a preliminary order, it may make an order to the holder of the shares to which the preliminary order applies to, directing such holder to dispose of the shares.
- (8) The Commission may give any instruction or direction to the directors or officers of the exchange holding company, stock exchange, recognized clearing house, exchange company, clearing house of an exchange company, central depository or any other relevant body corporate as defined under subsection 11L(5), as the case may be, as may be necessary or requisite to give effect to any order of the Commission under this section, or as may be incidental, ancillary or consequential to such order.
- (9) Any transaction, including any agreement or arrangement in relation to any shares, which is in contravention of any preliminary order, or of any order confirmed under subsection (6), or of any instruction or direction given by the Commission under subsection (8), shall be void and of no effect.
- (10) A person who contravenes any preliminary order, any order confirmed under subsection (6), or any instruction or direction given under subsection (8), commits an offence and is liable on conviction to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding five years or to both.
- (11) The satisfaction of the Commission under subsection (1) that the provisions of section 11M, 11N or 11O have been contravened by any person may be arrived at regardless as to whether or not there is any prosecution of any person for such contravention.”.

#### **Amendment of section 14**

- 14.** Section 14 of the principal Act is amended by substituting for subsection (2) the following subsection:

“(2) The provisions of subsection (1) shall not apply to—

- (a) a holder of a dealer’s licence;
- (b) a holder of a fund manager’s licence;
- (c) a person who is registered with a body as may be approved by the Commission, who acts as an investment adviser only in relation to its arranging or offering for the sale or purchase of any interest in a unit trust scheme; or

- (d) any person prescribed to be an exempt investment adviser by the Minister by order published in the *Gazette*, subject to such terms and conditions as the Minister may, on the recommendation of the Commission, specify in the order.”.

#### **Amendment of section 15A**

- 15.** Subsection 15A(2) of the principal Act is amended—
- (a) in paragraph (c), by deleting the word “or” at the end of that paragraph;
  - (b) in paragraph (d), by substituting for the full stop at the end of the paragraph the words “; or”; and
  - (c) by inserting after paragraph (d) the following paragraph:  
“(e) a person who acts as a fund manager only for its related corporation.”.

#### **Amendment of section 23**

- 16.** Subsection 23(1) of the principal Act is amended by substituting for the words “member company” the words “participating organization”.

#### **Amendment of section 24**

- 17.** The principal Act is amended by substituting for section 24 the following section:

##### **“Period of licence**

- 24.** (1) Subject to subsection (2), a licence shall expire twelve months after the date it is issued or on such date as may be specified by the Commission in writing with the consent of the applicant.
- (2) Unless otherwise specified by the Commission in writing with the consent of the licensed person, a licence that has been renewed in accordance with the provisions of this Part shall continue in force for a further period of twelve months commencing on the date upon which but for its renewal it would have expired.”.

#### **New section 28B**

- 18.** The principal Act is amended by inserting after section 28A the following section:

**"Powers concerning compliance with conditions of licence, *etc.* by licensed persons**

**28B.** (1) Without prejudice to section 11, where any licensed person—

(a) fails to comply with, observe, enforce or give effect to any requirement or provision of this Act, any securities laws, any condition of, or restriction on, a licence granted under or pursuant to this Act or the rules of a stock exchange, a recognized clearing house or a central depository, as the case may be, in circumstances where the licensed person is under an obligation to comply with, observe, enforce or give effect to such requirement, provision, condition of, or restriction on, a licence granted under or pursuant to this Act or rules; or

(b) performs or omits to perform any act in respect of any business carried on by the licensed person pursuant to a licence granted under or pursuant to this Act, that is likely to—

(i) jeopardise the interests of the clients of the licensed person; or

(ii) be prejudicial to the public interest,

that licensed person has committed a breach.

(2) If a licensed person has committed a breach and the Commission is satisfied that it is appropriate in all the circumstances to take action against that licensed person, the Commission may take any one or more of the following actions:

(a) direct the person in breach to comply with, observe, enforce or give effect to any requirement or provision of this Act, any securities laws, any condition of, or restriction on a licence granted under or pursuant to this Act or the rules of a stock exchange, recognized clearing house or central depository, as the case may be;

(b) impose a penalty in proportion to the severity or gravity of the breach on the person in breach, but which in any event shall not exceed one million ringgit;

(c) reprimand the person in breach;

(d) require the person in breach to take such steps as the Commission may direct to remedy the breach or to mitigate the effect of such breach, including making restitution to any other person aggrieved by such breach.

- (3) The Commission shall not take any action under subsection (2) without giving an opportunity to be heard.
- (4) For the purposes of paragraph (2)(d), in the determination of whether 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 any person has 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 do under this Act or any securities laws against the person in breach.”.

#### **Amendment of section 34**

- 19.** The principal Act is amended by substituting for section 34 the following section:

##### **“Particulars of financial journalists**

- 34.** (1) The Commission may by notice in writing require the proprietor, publisher or producer of a newspaper, periodical, information service or sound, video or data recording to supply the Commission with the name and address of the financial journalist who has contributed any advice or prepared any analysis or report that has been published or broadcast in a newspaper, periodical, information service or sound, video or data recording owned, published or broadcasted by that proprietor, publisher or producer or with the names and addresses of all the financial journalists who have contributed any such advice or prepared any such analysis or report within a period as may be specified in the notice.
- (2) A proprietor, publisher or producer of a newspaper, periodical, information service or sound, video or data recording who wilfully fails to comply with a notice under subsection (1) commits an offence.”.

#### **Amendment of section 40**

- 20.** Subsection 40(5) of the principal Act is amended by substituting for the words “member company” the words “participating organization”.

### **Amendment of section 40A**

21. Subsection 40A(2) of the principal Act is amended by substituting for paragraph (a) the following paragraph:

“(a) the adviser has, for the purposes of ascertaining that the recommendation is appropriate, taken all practicable measures to ascertain that the information possessed and relied upon by the adviser concerning the investment objectives, financial situation and particular needs of the person is accurate and complete;”.

### **Amendment of section 41**

22. Subsection 41(5) of the principal Act is amended by deleting the words “or listing requirements”.

### **Amendment of section 47C**

23. Section 47C of the principal Act is amended by substituting for subsection (10) the following subsection:

“(10) For the purposes of this Division, “custodian”, in relation to a client of a fund manager, means—

- (a) a licensed bank as defined in the Banking and Financial Institutions Act 1989 [Act 372] appointed by the fund manager with the prior written consent of the client;
- (b) a licensed finance company as defined in the Banking and Financial Institutions Act 1989 appointed by the fund manager with the prior written consent of the client;
- (c) a licensed merchant bank as defined in the Banking and Financial Institutions Act 1989 appointed by the fund manager with the prior written consent of the client; or
- (d) any other person as may be specified by the Commission.”.

### **New section 47F**

24. The principal Act is amended by inserting after section 47E the following section:

**“Commission’s power to transfer client’s property and monies to a trust company, etc. under certain circumstances**

**47F.** (1) Notwithstanding the provisions of this Division, where—

(a) the Commission is satisfied that a fund manager has contravened or failed to comply with any provision of this Act or any term or condition in respect of its licence; or

(b) the Commission is of the view that the interests of the clients of the fund manager are likely to be jeopardized or are jeopardised,

the Commission may take any one or more of the following actions:

(aa) direct the fund manager not to deal with the monies and property of such clients subject to such terms and conditions as the Commission may impose; or

(bb) direct the fund manager to transfer the monies and property of such clients to whom a direction under subsection (1) applies to a trust company registered under the Trust Companies Act 1949, or any other person as may be specified by the Commission.

(2) Where the Commission takes action under paragraph (1)(bb), the Commission shall cause to be published in two daily newspapers published and circulating generally in Malaysia, one in the national language and one in the English language, a notice to all clients of the fund manager to whom a direction under paragraph (1)(bb) applies.

(3) The Commission may revoke the direction or vary any term or condition of the direction under subsection (1), if the circumstances that give rise to the direction or such term or condition of the direction, as the case may be, cease to exist.

(4) A fund manager to whom the direction is made under subsection (1) shall comply with or give effect to such direction or to such term or condition of the direction.”.

#### **Amendment of section 48**

**25.** Section 48 of the principal Act is amended by substituting for subsections (1) and (2) the following subsections:

“(1) This Division applies to the business of a dealer, a fund manager, an exchange holding company, a stock exchange, a recognized clearing house and a central depository.

(2) A reference to a relevant person in this Division shall be construed as a reference to a dealer, a fund manager, an exchange holding company, a stock exchange, a recognized clearing house and a central depository.”.

## **Amendment of section 50**

**26.** Section 50 of the principal Act is amended—

(a) in paragraph (1)(aa), by substituting for the words “member company” the words “participating organization”;

(b) by substituting for subsection (2) the following subsection:

“(2) No auditor shall be liable to be sued in any court in respect of any statement made by the auditor in good faith—

(a) in his report under subsection (1); or

(b) under subsection 48(5).”;

(c) in subsection (3)—

(i) in paragraph (c), by deleting the word “or” at the end of the paragraph;

(ii) in paragraph (d), by substituting for the comma at the end of the paragraph the words “; or”; and

(iii) by inserting after paragraph (d) the following paragraph:

“(e) submit an interim report on any of the matters referred to in paragraphs (a) to (d),”; and

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

“(5) The relevant person shall provide such information and access to such information as the auditor shall require in respect of the discharge by him of all or any of the additional duties under this Division.”.

## **Amendment of section 59**

**27.** The principal Act is amended by substituting for section 59 the following section:

### **“Rights of board of stock exchange to impose obligations on participating organization**

**59.** The provisions of this Part shall not prevent the board of a stock exchange or an exchange holding company, as the case may be, from imposing on any participating organization any further obligation or requirement which the board deems fit with respect to—

- (a) the audit of accounts;
- (b) the information to be furnished in reports from auditors; or
- (c) the keeping of accounts, books and records.”.

#### **Amendment of section 62**

- 28.** Paragraph 62(b) of the principal Act is amended by substituting for the words “member companies” the words “participating organizations”.

#### **Amendment of sections 67, 68 and 69**

- 29.** Sections 67, 68 and 69 of the principal Act are amended by substituting for the words “member company” and “member companies”, wherever they appear, the words “participating organization” and “participating organizations” respectively.

#### **Amendment of section 70**

- 30.** Subsection 70(1) of the principal Act is amended by substituting for the word “committee” the words “board of the stock exchange”.

#### **Amendment of section 72**

- 31.** Section 72 of the principal Act is amended—
- (a) in subsections (1), (3), (5) and (7), by substituting for the words “member company” wherever they appear the words “participating organization”; and
  - (b) in subsection (1), by substituting for the words “member company’s” the words “participating organization’s”.

#### **Amendment of sections 78 and 79**

- 32.** Sections 78 and 79 of the principal Act are amended by substituting for the words “member company” wherever they appear the words “participating organization”.

#### **Amendment of section 82**

- 33.** Section 82 of the principal Act is amended—

(a) in subsection (2), by substituting for the words "member company" and "member companies", wherever they appear, the words "participating organization" and "participating organizations" respectively; and

(b) by substituting for subsection (3) the following subsection:

"(3) An action shall not lie against a relevant stock exchange or against any member or employee or against any committee or subcommittee of a board of a relevant stock exchange as the case may be, for injury alleged to have been suffered by any participating organization by reason of the publication in good faith of a statement that any contract entered into under this section does or does not apply with respect to the participating organization."

### **Amendment of section 83B**

**34.** Subsection 83B(2) of the principal Act is amended by substituting for the words "member companies" the words "participating organizations".

### **New Part VIIIA**

**35.** The principal Act is amended by inserting after Part VIII the following Part:

"PART VIIIA  
CAPITAL MARKET DEVELOPMENT FUND

### **Establishment of Capital Market Development Fund**

- 83C.** (1) There shall be established a fund to be called the Capital Market Development Fund, referred to in this Part as "the Fund".
- (2) The Fund shall be administered by the Capital Market Development Fund Board referred to in this Part as the "Board".
- (3) The Commission shall be responsible to assist the Board in the day-to-day administration and management of the affairs of the Fund.

### **Assets constituting Fund**

**83D.** The Fund shall consist of—

- (a) such shares as are approved for the Fund under paragraph 4(1)(d) of the Demutualisation (Kuala Lumpur Stock Exchange) Act 2003 [*Act 632*];

- (b) proceeds raised in connection with the sale of the shares that are referred to in paragraph (a);
- (c) such sums as may be provided from time to time for the purposes of this Part by Parliament;
- (d) all donations and gifts accepted by the Board for the Fund;
- (e) all interest, dividend and other income derived from the investment of the monies of the Fund; and
- (f) all other sums or property which may in any manner become payable to or vested in the Fund.

**Objects of the Fund, etc.**

- 83E.** (1) The objects for which monies of the Fund may be applied are as follows:
- (a) the promotion of the capital market in Malaysia to be an efficient, innovative and internationally competitive market;
  - (b) the development and upgrading of skills and expertise required by the capital market in Malaysia;
  - (c) the development of self regulation by professional associations and market bodies in the securities and futures industries; and
  - (d) the development and support of high quality research and development programmes and projects relating to the capital market in Malaysia.
- (2) The Fund shall be expended for the purposes of—
- (a) meeting all payments required to be made by the Fund consistent with its objects;
  - (b) paying any expenses lawfully incurred by the Fund including fees and costs, and the remuneration of persons employed or engaged by the Board, including the granting of loans, superannuation allowances or gratuities;
  - (c) paying any other expenses, costs or expenditure properly incurred or accepted by the Board, for purposes of its powers and carrying out of its duties; and
  - (d) generally paying any expenses for carrying into effect the provisions of this Part and in connection with the administration of the Fund.

- (3) The Minister may approve the payment out of the Fund of any cost, expense or other payment for purposes other than those specified in subsection (2) that are not inconsistent with the objects of the Fund.

### **Membership of the Board**

- 83F.** (1) The members of the Board shall be appointed by the Minister and the Board shall consist of—
- (a) the Chairman of the Commission, as an *ex-officio* member, who shall be the Chairman;
  - (b) the Deputy Chief Executive of the Commission, who shall be an *ex-officio* member;
  - (c) a senior representative of an exchange holding company; and
  - (d) four other members who possess knowledge and experience in finance, business, law or other relevant experience.
- (2) If the Chairman of the Board is absent or unable to act due to illness or any other cause, the Deputy Chief Executive of the Commission shall act in his place as the Chairman of the Board.
- (3) Members of the Board shall not be entitled to any remuneration but may be paid such honorarium and traveling and subsistence allowances as the Minister may determine.
- (4) The Board shall have such powers and shall perform such duties as are given or imposed by this Act or as may be prescribed from time to time by the Minister and may by instrument in writing delegate to any person all or any of such powers and duties.

### **Tenure of office**

- 83G.** (1) Subject to subsection (2), a member of the Board, other than the *ex-officio* members referred to in subsection 83F(1), shall hold office for a term not exceeding three years and shall be eligible for reappointment.
- (2) In the case of the Chairman of the Commission and the Deputy Chief Executive of the Commission, who are *ex-officio* members of the Board, their tenure of office as members of the Board shall be the tenure of their appointments as Chairman of the Commission and Deputy Chief Executive of the Commission respectively under the Securities Commission Act 1993.

### **Resignation and revocation of appointment**

- 83H.** (1) A member of the Board may, at any time resign his office by a written notice addressed to the Minister.
- (2) The Minister may at any time revoke the appointment of a member of the Board if he deems fit.

### **Vacation of office**

- 83I.** The office of a member of the Board shall be vacated if—
- (a) he dies;
  - (b) he has been convicted of any offence involving fraud or dishonesty;
  - (c) he becomes bankrupt;
  - (d) he is of unsound mind or is otherwise incapable of discharging his duties;
  - (e) he is absent from three consecutive meetings of the Board except on leave granted by the Minister; or
  - (f) he is guilty of serious misconduct in relation to his duties under this Act.

### **Quorum and procedures of meetings**

- 83J.** (1) The Board shall meet as often as may be necessary for the performance of its functions or duties under this Part.
- (2) The quorum of the Board shall be four.
- (3) Subject to this Part, the Board shall determine its own procedures.
- (4) The Board may invite any person to attend any meeting or deliberation of the Board for the purpose of advising it on any matter under discussion, but any person so attending shall have no right to vote at the said meeting or deliberation.
- (5) Subject to section 83K, if on any question to be determined, there is an equality of votes, the Chairman of the Board shall have the casting vote in addition to his original vote.

### **Disclosure of interest**

- 83K.** (1) A member of the Board who has or acquires a direct or indirect interest in relation to any matter under discussion by the Board shall disclose to the Board the existence of his interest and nature thereof.
- (2) A disclosure made under subsection (1) shall be recorded in the minutes of the Board, and after the disclosure—
- (a) the member shall not take part nor be present in any deliberation or decision of the Board;
  - (b) the member shall be disregarded for the purpose of constituting a quorum of the Board relating to the matter; and
  - (c) no act or proceedings of the Board shall be invalidated on the ground that any member of the Board has contravened the provisions of this section.

### **Conservation of the Fund**

- 83L.** (1) It shall be the duty of the Board to conserve the Fund consistent with the provisions of this Part or any regulations made under this Part.
- (2) The Board may invest the monies of the Fund available for investment in such manner as the Board may, by any regulations prescribed by the Minister, be authorised to invest.
- (3) Without affecting the generality of section 83F, the Board may by written instrument delegate all or any of its powers and functions under subsection (2) to any employee or person as it may appoint.
- (4) The Board may pay to any person appointed under subsection (3) a fee for any service rendered in exercise of any power and function delegated to that person under that subsection.

### **Financial year**

- 83M.** For the purposes of this Part, the financial year of the Fund shall commence on 1 January and end on 31 December of each year.

### **Accounts and audit**

- 83N.** (1) The Board shall keep or cause to be kept proper accounts and other records in respect of the operation of the Fund and shall prepare

statements of accounts in respect of each financial year.

- (2) The Board shall, not later than three months after the end of each financial year, cause the accounts of the Fund to be audited by auditors appointed by the Board.
- (3) At the end of each financial year and as soon as the accounts of the Fund have been audited, the Board shall cause a copy of the statement of accounts to be submitted to the Minister, together with a report dealing with the investments of the Fund during the preceding financial year and containing such information relating to the proceedings and policies of the Board as the Minister may from time to time direct.
- (4) The Statutory Bodies (Accounts and Annual Reports) Act 1980 [*Act 240*] shall not apply to the Fund.

### **Power of Minister in relation to the Board**

**83O.** The Minister may give the Board such directions of a general nature that are not inconsistent with the provisions of this Part that relate to the exercise and performance of its functions and the Board shall give effect to such directions.

### **Dissolution of the Fund**

- 83P.** (1) Where the Minister is satisfied that there are insufficient funds standing to the credit of the Fund to adequately fulfill the objects referred to in section 83E, he may, by notification in the *Gazette*, dissolve the Fund and transfer such assets and monies as may remain to the credit of the Fund to such other fund that has similar objects to the Fund.
- (2) In the event the Fund is dissolved under subsection (1) and there is no other fund that satisfies the provisions of subsection (1) with regards to its objects, the assets and funds that remain to the credit of the Fund shall be transferred to the Federal Consolidated Fund.

### **Power to make regulations**

**83Q.** The Minister may make such regulations for the better carrying out of the provisions of this Part or as may be necessary or expedient for—

- (a) giving full effect to the provisions of this Part;
- (b) carrying out or achieving the objects and purposes of this Part; or

- (c) the further, better or more convenient implementation of the provisions of this Part.”.

### **Amendment of section 89J**

**36.** Section 89J of the principal Act is amended—

- (a) by renumbering the existing provisions as subsection (1) of that section;
- (b) in subsection (1), by substituting for the words “89e” the words “89E”; and
- (c) by inserting after subsection (1) the following subsections:

“(2) Subsection (2) shall not apply to a recognized clearing house which acquires or disposes of securities for the purpose of settlement of a market contract or in relation to any proceedings or other action relating to the settlement of a market contract where the acquisition or disposal of securities is effected in accordance with the rules of a recognized clearing house.

(3) Subsection (2) shall not apply to a stock exchange in relation to a sale or purchase of securities where the stock exchange acts on an instruction from a recognized clearing house pursuant to section 114.”.

### **Amendment of section 90A**

**37.** The principal Act is amended in section 90A by substituting for the words “five hundred thousand ringgit” appearing in paragraphs (5)(b) and (6)(b) the words “one million ringgit”.

### **Amendment of section 92**

**38.** The principal Act is amended by substituting for section 92 the following section:

#### **“Dealer to give priority to client’s order**

**92.** (1) Except as permitted by subsection (3)—

- (a) the holder of a dealer’s licence or a fund manager’s licence when acting as principal or on behalf of a person associated with or connected to the holder; or
- (b) a representative of such a holder when acting for his own account or on behalf of a person associated with or connected to the representative,

shall not enter into a transaction of purchase or sale of securities that are permitted to be traded on the stock market of a stock exchange if a client of that holder or representative who is not associated with or connected to the holder or representative, has instructed the holder or representative to purchase or sell, respectively, securities of the same class and the dealer has not complied with the instruction.

- (2) A person who contravenes this section commits an offence and shall be liable on conviction to a fine of not less than one million ringggit and to imprisonment for a term not exceeding ten years.
- (3) Subsection (1) does not apply in relation to the entering into of a transaction by the holder of a dealer's licence or a fund manager's licence as principal or on behalf of a person associated with or connected to the holder, or by a representative of such a holder for his own account or on behalf of a person associated with or connected to the representative, if—
  - (a) the instructions from the client of the holder of a dealer's licence or a fund manager's licence required the purchase or sale of securities on behalf of the client to be effected only on specified conditions relating to the price at which the securities were to be purchased or sold and the holder of a dealer's licence or a fund manager's licence or a representative of such holder has been unable to purchase or sell the securities by reason of those conditions; or
  - (b) the transaction is entered into in prescribed circumstances."

### **Amendment of section 93**

- 39.** Subsection 93(3) of the principal Act is amended by substituting for the words "member company" wherever they appear the words "participating organization".

### **Amendment of section 95**

- 40.** Paragraph 95(1)(a) of the principal Act is amended—

(a) by substituting for subparagraphs (i) and (ii) the following subparagraphs:

"(i) an exchange holding company or a stock exchange;

(ii) a member of the board of an exchange holding company or a stock exchange;"

- (b) in subparagraph (v), by substituting for the words "a stock exchange" the words "an exchange holding company or a stock exchange,"; and
- (c) in subparagraph (vi), by substituting for the words "a stock exchange" the words "an exchange holding company or a stock exchange, as the case may be;".

### **Amendment of section 98**

- 41.** Subsection 98(3) of the principal Act is amended by substituting for the words "members of that stock exchange" the words "participating organizations".

### **New sections 99E and 99F**

- 42.** The principal Act is amended by inserting after section 99D the following sections:

#### **"Duties of auditor of listed corporations**

- 99E.** (1) If an auditor, in the course of the performance of his duties as an auditor of a listed corporation, is of the professional opinion that there has been a breach or nonperformance of any requirement or provision of the securities laws, a breach of any of the rules of the stock exchange or any matter which may adversely affect to a material extent the financial position of the listed corporation, the auditor shall immediately submit a written report on the matter—
  - (a) in the case of a breach or non-performance of any requirement or provision of the securities laws, to the Commission;
  - (b) in the case of a breach or non-performance of any of the rules of a stock exchange, to the relevant stock exchange and the Commission; or
  - (c) in any other case which adversely affects to a material extent the financial position of the listed corporation, to the relevant stock exchange and the Commission.
- (2) No auditor shall be liable to be sued in any court for any report submitted by the auditor in good faith and in the intended performance of any duty imposed on the auditor under this section.
- (3) The Commission may, at any time during or after an audit, require an auditor of a listed corporation to—

- (a) submit such additional information in relation to his audit as the Commission may specify;
- (b) enlarge or extend the scope of his audit of the business and affairs of the listed corporation in such manner or to such extent as the Commission may specify;
- (c) carry out any specific examination or establish any procedure in any particular case;
- (d) submit a report on any matter referred to in paragraphs (a) to (c); or
- (e) submit an interim report on any matter referred to in paragraphs (a) to (d),

and the Commission may specify the time within which any of such requirements shall be complied with by the auditor and may specify the remuneration which the listed corporation shall pay to the auditor in respect thereof.

- (4) The auditor shall comply with any requirement of the Commission under subsection (3) and the listed corporation shall remunerate the auditor in respect of the discharge by him of all or any of the additional duties under this section.
- (5) The listed corporation shall provide such information and access to such information as the auditor shall require in respect of the discharge by him of all or any of the additional duties under this section.

### **Protection for persons against retaliation for reporting to authorities in specific circumstances**

**99F.** (1) Where a chief executive, any officer responsible for preparing or approving financial statements or financial information, an internal auditor or a secretary of a listed corporation by whatever name described, has in the course of the performance of his duties reasonable belief of any matter which may or will constitute a breach or nonperformance of any requirement or provision of the securities laws or a breach of any of the rules of a stock exchange or any matter which may adversely affect to a material extent the financial position of the listed corporation and any of the aforementioned persons submits a report on the matter—

- (a) in the case of a breach or non-performance of any requirement or provision of the securities laws, to the Commission;

- (b) in the case of a breach or non-performance of any of the rules of a stock exchange, to the relevant stock exchange or the Commission; or
- (c) in any other case which adversely affects to a material extent the financial position of the listed corporation, to the relevant stock exchange or the Commission,

the listed corporation shall not remove, discriminate, demote, suspend or interfere with the lawful employment or livelihood of, the chief executive, any officer responsible for preparing or approving financial statements or financial information, internal auditor or secretary, of the listed corporation because of the report submitted by any of such persons.

- (2) No chief executive, officer responsible for preparing or approving financial statements or financial information, internal auditor or a secretary of a listed corporation shall be liable to be sued in any court for any report submitted by such person in good faith and in the intended performance of his duties.
- (3) For the purposes of this section, "secretary" means a person who is referred to in section 139 of the Companies Act 1965."

### **Amendment of section 100**

**43.** Section 100 of the principal Act is amended—

(a) in subsection (1)—

- (i) by substituting for paragraphs (a), (b), (ba) and (c) the following paragraphs:

"(a) on an application by the Commission, it appears to the High Court that—

- (i) there is reasonable likelihood that any person will contravene a relevant requirement;
- (ii) any person has contravened a relevant requirement; or
- (iii) any person has contravened a relevant requirement and that there are steps which could be taken to remedy the contravention or to mitigate the effect of such contravention including making restitution to any other person aggrieved by such contravention,

whether or not that person has been charged with an offence in respect of the contravention or whether or not a contravention has been proved in a prosecution;

(b) on an application by an exchange holding company, a stock exchange or a recognized clearing house, as the case may be, it appears to the High Court that—

(i) any person has contravened a relevant requirement; or

(ii) any person has contravened a relevant requirement and that there are steps which could be taken for remedying the contravention or mitigating the effect of such contravention; or

(c) on an application by any person aggrieved by an alleged contravention by another person of a relevant requirement, it appears to the High Court that—

(i) the other person has contravened the relevant requirement; and

(ii) the applicant is aggrieved by the contravention;”;

(ii) by substituting for paragraphs (aa) and (bb) the following paragraphs:

“(aa) an order restraining the contravention;

(bb) an order restraining the person from acquiring, disposing of or otherwise dealing with, assets which the High Court is satisfied such person is reasonably likely to dispose of or otherwise deal with;”;

(iii) in paragraph (ii), by substituting for the words “under this Act” the words “under a relevant requirement”;

(iv) in paragraph (jj), by deleting the words “or listing requirements” wherever they appear; and

(v) by inserting after paragraph (kk) the following paragraph:

“(kka) an order requiring that person, or any other person who appears to have been knowingly involved in the contravention, to take such steps as the High Court may direct to remedy it or to mitigate its effect including making restitution to any other person aggrieved by such contravention;”;

(b) by inserting after subsection (7) the following subsections:

“(8) For the purposes of this section, “relevant requirement”—

(a) in relation to an application by the Commission under this section, means a requirement—

(i) which is imposed by or under this Act or any securities laws;

(ii) which is imposed as a condition or restriction of any approval or licence that is given or issued under or pursuant to this Act or any securities laws;

(iii) which is imposed by or under the rules of a stock exchange or a recognized clearing house; or

(iv) which is imposed by or under any other law and the contravention of which constitutes an offence which the Commission has the power to prosecute with the consent in writing of the Public Prosecutor;

(b) in relation to an application by the exchange holding company, a stock exchange or a recognized clearing house, means a requirement which is imposed by or under the rules of the stock exchange or recognized clearing house, as the case may be; and

(c) in relation to an application by the aggrieved person, means a requirement—

(i) which is imposed by or under this Act;

(ii) which is imposed as a condition or restriction of any approval or licence that is given or issued under or pursuant to this Act or any securities laws; or

(iii) which is imposed by or under the rules of a stock exchange or a recognized clearing house.

(9) An application made pursuant to this section shall not prejudice any other action that may be taken by the Commission, exchange holding company, stock exchange, recognized clearing house or aggrieved person, as the case may be, under any securities laws or any other law or rules.”.

## **Amendment to section 100A**

- 44.** Paragraph 100A(2)(b) of the principal Act is amended by deleting the words “or listing requirements”.

## **New Part XA**

- 45.** The principal Act is amended by inserting after Part X the following Part:

“PART XA  
MODIFICATIONS TO THE LAW OF INSOLVENCY  
AND MISCELLANEOUS PROVISIONS RELATING TO  
THE OPERATIONS AND PROCEDURES OF THE  
RECOGNIZED CLEARING HOUSE

### **Interpretation**

- 101.** (1) In this Part, unless the context otherwise requires—
- (a) “charge” means any form of security, including a mortgage;
  - (b) “market charge” means a charge, whether fixed or floating, granted in favour of a recognized clearing house over any property as specified in the rules of the recognized clearing house;
  - (c) “default rules”, in relation to a recognized clearing house, means such rules of the recognized clearing house which provide for the taking of default proceedings if a participant has failed, or appears to be unable, or likely to become unable, to meet its obligations in respect of all or any unsettled market contracts to which the participant is a party;
  - (d) “market collateral” means any property specified in the rules of a recognized clearing house held by or deposited with a recognized clearing house for the purpose of securing liabilities arising directly in connection with the recognized clearing house ensuring the performance or settlement of one or more market contracts;
  - (e) “market contract” means—
    - (i) a contract which is subject to the rules of a recognized clearing house and entered into by the recognized clearing house with a participant pursuant to a novation for the purpose of the clearing and settlement of transactions in securities effected on, or subject to the rules of, the stock exchange; or

- (ii) a contract entered into by a participating organization of the stock exchange on, or subject to the rules of, the stock exchange, which is, or is to be, settled by the recognized clearing house;
- (f) "defaulter" means a participant who is the subject of any default proceedings;
- (g) "relevant office-holder" means—
  - (i) the Official Assignee appointed under section 70 of the Bankruptcy Act 1967 [*Act 360*];
  - (ii) any person acting in relation to a company as its liquidator, provisional liquidator, receiver or manager;
  - (iii) any person acting in relation to an individual as his trustee in bankruptcy or interim receiver of his property;
  - (iv) any person appointed pursuant to an order for the administration in bankruptcy of an insolvent estate of a deceased person; or
  - (v) a Special Administrator appointed under the Pengurusan Danaharta Nasional Berhad Act 1998 [*Act 587*];
- (h) "default proceedings" means any proceedings or other action taken by a recognized clearing house under its default rules.
- (2) Where—
  - (a) a charge is granted partly for the purpose specified in the definition of "market charge" and partly for other purposes, the charge is a "market charge" in so far as it has effect for the specified purposes of securing liabilities arising directly in connection with the recognized clearing house ensuring the performance or settlement of one or more market contracts;
  - (b) collateral is provided partly for the purpose specified in the definition of "market collateral" and partly for other purposes, the collateral is a "market collateral" in so far as it has been provided for the specified purposes of securing liabilities arising directly in connection with the recognized clearing house ensuring the performance or settlement of one or more market contracts.

## **Default rules**

- 102.** (1) A recognized clearing house shall have default rules which provide for the taking of proceedings or other action in the event of a participant

appearing to be unable, or likely to become unable, to meet its obligations in respect of all market contracts due for settlement to which it is a party.

- (2) Where a recognized clearing house takes any default proceedings, all subsequent proceedings or other action taken under its rules for the purposes of the settlement of market contracts of which the defaulter concerned is a party shall be treated as done under the default rules of the recognized clearing house notwithstanding that, but for this subsection, such proceedings or other action would not be treated as done under the default rules of the recognized clearing house.

### **Proceedings of recognized clearing house to take precedence over law of insolvency**

- 103.** (1) None of the following shall be regarded to any extent as invalid on the ground of inconsistency with the provisions relating to the distribution of the assets of a person under the laws of insolvency, or on the appointment of a relevant officeholder over any of the assets of a person:
- (a) a market contract;
  - (b) the rules of a recognized clearing house relating to the settlement of a market contract;
  - (c) any proceedings or other action taken under the rules of a recognized clearing house relating to the settlement of a market contract;
  - (d) a market charge;
  - (e) the default rules of a recognized clearing house; or
  - (f) any default proceedings.
- (2) Subject to subsection (3), the powers of a relevant office-holder in his capacity as such, and the powers of a court under the law of insolvency, shall not be exercised in such a way as to prevent or interfere with—
- (a) the settlement of a market contract in accordance with the rules of a recognized clearing house; or
  - (b) any default proceedings.
- (3) Subsection (2) shall not operate to prevent a relevant office-holder from seeking to recover any amount referred to under subsection 109(1).

### **Supplementary provisions as to default proceedings**

- 104.** (1) A court may on an application by a relevant officeholder make such order as it deems fit altering or dispensing from compliance with such of the functions of his office as are affected by the fact that default proceedings are pending or could be taken, or have been or could have been taken and, accordingly, such functions of the relevant office-holder shall be construed subject to such order.
- (2) Nothing in—
- (a) section 8, 10 or 18 of the Bankruptcy Act 1967; or
  - (b) section 176, 222, 224 or 226 of the Companies Act 1965,
- shall prevent or interfere with any default proceedings.

### **Duty to report on completion of default proceedings**

- 105.** (1) A recognized clearing house shall, upon the completion of any default proceedings, make a report on such default proceedings stating in respect of each defaulter—
- (a) the net sum, if any, certified by the recognized clearing house to be payable by or to the defaulter; or
  - (b) the fact that no sum is so payable,
- as the case may be, and the recognized clearing house may include in that report such other particulars in respect of such default proceedings as it thinks fit.
- (2) A recognized clearing house, which has made a report pursuant to subsection (1), shall supply the report to—
- (a) the Commission;
  - (b) any relevant office-holder acting for—
    - (i) the defaulter to whom the report relates; or
    - (ii) that defaulter's estate;
  - (c) if there is no relevant office-holder referred to in paragraph (b), the defaulter to whom the report relates; and
  - (d) such other person as the Commission deems fit.

- (3) Where a recognized clearing house has made a report pursuant to subsection (1), it may publish notice of that fact in such a manner as it thinks appropriate to bring it to the attention of creditors of the defaulter to whom the report relates.
- (4) Where a relevant office-holder or defaulter receives a report pursuant to subsection (2), he shall, at the request of a creditor of the defaulter to whom the report relates—
  - (a) make the report available for inspection by the creditor; and
  - (b) on payment of such reasonable fee as the relevant office-holder or defaulter, as the case may be, determines, supply to the creditor all or any part of that report.
- (5) In subsections (2), (3) and (4), "report" includes a copy of a report.

### **Net sum payable on completion of default proceedings**

- 106.** (1) This section shall apply with respect to any net sum certified under subsection 105(1) by a recognized clearing house, upon the completion by it of any default proceedings, to be payable by or to a defaulter.
- (2) Where a receiving or winding-up order has been made, or a resolution for voluntary winding-up has been passed, any net sum shall, notwithstanding any of the provisions of section 40 or 41 of the Bankruptcy Act 1967 or section 291 of the Companies Act 1965, be—
    - (a) provable in the bankruptcy of a defaulter or windingup or, as the case may be, payable to the relevant office-holder; and
    - (b) taken into account, where appropriate, under section 41 of the Bankruptcy Act 1967 or that section as applied in the case of a winding-up order under the Companies Act 1965.

### **Disclaimer of property, rescission of contracts, etc.**

- 107.** (1) Neither section 59 of the Bankruptcy Act 1967 nor subsection 296(1) of the Companies Act 1965 shall apply in relation to—
- (a) a market contract;
  - (b) a contract effected by a recognized clearing house for the purposes of realising property provided as market collateral;
  - (c) a market charge; or

- (d)* any default proceedings.
- (2) Neither section 47 of the Bankruptcy Act 1967 nor section 223 of the Companies Act 1965 shall apply in relation to any act, matter or thing which has been done pursuant to—
- (a)* a market contract;
  - (b)* a disposition of property pursuant to a market contract;
  - (c)* the provision of market collateral;
  - (d)* a contract effected by a recognized clearing house for the purpose of realising property provided as market collateral;
  - (e)* a disposition of property in accordance with the rules of a recognized clearing house as to the application of property provided as market collateral;
  - (f)* a market charge;
  - (g)* a disposition of property as a result of which the property becomes subject to a market charge, or any transaction pursuant to which that disposition is made;
  - (h)* a disposition of property made in enforcing a market charge; or
  - (i)* any default proceedings.

### **Adjustment to prior transactions**

- 108.** (1) No order shall be made pursuant to—
- (a)* sections 53, 53A and 54 of the Bankruptcy Act 1967; or
  - (b)* sections 293 and 304 of the Companies Act 1965,
- in relation to any matter under subsection (2).
- (2) The matters to which subsection (1) apply are—
- (a)* a market contract;
  - (b)* a disposition of property pursuant to a market contract;
  - (c)* the provision of market collateral;

- (d) a contract effected by a recognized clearing house for purposes of realising property provided as market collateral;
- (e) a disposition of property in accordance with the rules of a recognized clearing house as to the application of property provided as market collateral;
- (f) a market charge; and
- (g) any default proceedings.

**Right of relevant office-holder to recover certain amounts arising from certain transactions**

**109.** (1) If a participant ("the first participant") sells securities at an overvalue to, or purchases securities at an undervalue from, another participant ("the second participant") in circumstances as described in subsection (3), and thereafter a relevant office-holder acts for—

- (a) the second participant;
- (b) the principal of the second participant in the sale or purchase; or
- (c) the estate of the second participant or of the person referred to in paragraph (b),

then, unless a court otherwise orders, the relevant officeholder may recover, from the first participant, or the principal of the first participant, an amount equal to the identified gain obtained under the sale or purchase by the first participant, or the principal of the first participant.

- (2) The amount equal to the identified gain is recoverable even if the sale or purchase may have been discharged according to the rules of a recognized clearing house and replaced by a market contract.
- (3) The circumstances referred to in subsection (1) for a sale or purchase shall be when—
  - (a) an identified event has occurred in relation to the second participant or the principal of the second participant; and
  - (b) either—
    - (i) the first participant knew, or ought reasonably to have known that an identified event was likely to occur in relation to the second participant or the principal of the second participant; or

- (ii) the principal of the first participant knew or ought reasonably to have known that an identified event was likely to occur to the second participant or the principal of the second participant,

and the identified event occurs within the period of six months immediately following the date on which the sale or purchase was entered into.

(4) In this section—

(a) “identified event”, in relation to a second participant or a person who is or was, in respect of a sale or purchase referred to in subsection (1), the principal of the second participant, means—

- (i) an act of bankruptcy committed by the second participant or the principal of the second participant, as the case may be;
- (ii) the making of a statutory declaration in respect of the second participant or the principal of the second participant, as the case may be, pursuant to section 255 of the Companies Act 1965;
- (iii) a meeting of creditors summoned in relation to the second participant or the principal of the second participant, as the case may be, pursuant to section 260 of the Companies Act 1965; or
- (iv) the presentation of a petition for the windingup of the second participant or the principal of the second participant, as the case may be, by a court;

(b) “identified gain”, in relation to a sale or purchase referred to in subsection (1), means the difference between—

- (i) the market value of the securities which is the subject of the sale or purchase; and
- (ii) the value of the consideration for the sale or purchase,

as at the time the sale or purchase was entered into.

### **Law of insolvency in other jurisdictions**

**110.** (1) A court shall not, pursuant to any enactment or rule of law, recognise or give effect to—

(a) any order of a court exercising jurisdiction in relation to the law of insolvency in a place outside Malaysia; or

*(b)* any act of a person appointed in such a place to perform any function under the law of insolvency in such place,

in so far as the making of the order or the doing of the act would be prohibited in the case of a court in Malaysia or a relevant office-holder by provisions made by or under this Act.

(2) In this section, "law of insolvency" in relation to a place outside Malaysia means any law of such place which is similar to, or serves the same purposes as, all or any part of the law of insolvency in Malaysia.

### **Participant to be a party to certain transactions as principal**

**111.** (1) Where—

*(a)* a participant in his capacity as such enters into any transaction (including a market contract) with a recognized clearing house; and

*(b)* but for this subsection, the participant would be a party to that transaction as agent,

then, notwithstanding any provision under any law, as between, but only as between, the recognized clearing house and any other person (including the participant and the person who is his principal in respect of that transaction), the participant shall for all purposes (including any civil action, claim or demand)—

*(aa)* be deemed not to be a party to that transaction as agent; and

*(bb)* be deemed to be a party to that transaction as principal.

(2) Where—

*(a)* two or more participants in their capacities as such enter into any transaction; and

*(b)* but for this subsection, any such participant would be a party to that transaction as agent,

then, notwithstanding any provision under any law, any such participant to whom paragraph *(b)* applies shall for all purposes (including any civil action, claim or demand), except as between, but only as between, him and the person who is his principal in respect of the transaction—

*(aa)* be deemed not to be a party to that transaction as agent; and

*(bb)* be deemed to be a party to that transaction as principal.

### **Securities delivered to a recognized clearing house**

**112.** Where securities are delivered in settlement of a market contract or provided as market collateral or under a market charge—

- (a) to a recognized clearing house;
- (b) by a participant; and
- (c) in accordance with the rules of the recognized clearing house,

then, notwithstanding any provision under any law, no civil action, claim or demand, in respect of any right, title or interest in those securities held or enjoyed by any person lies, or shall be commenced or allowed, against the recognized clearing house.

### **Securities transfers in settlement**

- 113.** (1) Notwithstanding any other provision of law, including the Securities Industry (Central Depositories) Act 1991, in particular section 29A of that Act, a central depository shall give effect to an instruction from a recognized clearing house to effect a transfer of securities into or out of a securities account of a depositor provided such instruction shall be for the purposes of settlement of a market contract or otherwise dealing with a market contract in accordance with the rules of the recognized clearing house.
- (2) An instruction under subsection (1) shall be given by a recognized clearing house only in relation to a securities account which relates to a depositor who is a party to a market contract or a depositor who had instructed a participant to effect a trade which results in a market contract to which the participant has become a party.
- (3) Notwithstanding any other provision of law, where any transfer of securities is effected by the central depository to or from a securities account of a depositor pursuant to subsection (1), no title in such securities shall pass to a depositor except as provided under the rules of the recognized clearing house.
- (4) Where a transfer of securities has been effected into or out of a securities account of a depositor pursuant to subsection (1), a central depository shall not be subject to any action or claim by or be liable to any damages to that depositor.
- (5) In this section, the terms "depositor" and "securities account" shall have the same meaning as in the Securities Industry (Central Depositories) Act 1991.

## **Purchase and sale of securities**

- 114.** (1) A recognized clearing house may instruct any stock exchange to effect on behalf of the recognized clearing house a sale or purchase of securities, if such sale or purchase, as the case may be, is effected for the purposes of settlement of any market contract or to facilitate a default proceeding or to enable a recognized clearing house to realise any asset comprised in any market charge or provided as market collateral, and the stock exchange shall give effect to any such instruction.
- (2) Where a sale or purchase of securities has been effected on behalf of the recognized clearing house pursuant to subsection (1), the stock exchange shall not be subject to any action or claim by or be liable to any damages to any person.

## **Immunity**

- 115.** (1) The functions to which this section applies are the functions of a recognized clearing house so far as relating to or arising out of—
- (a) the default rules of the recognized clearing house; or
  - (b) any obligations to which it is subject by virtue of this Part.
- (2) A failure by a recognized clearing house to comply with its default rules in respect of any matter shall not prevent that matter from being treated for the purposes of this Act as done in accordance with those rules so long as the failure does not affect the rights of any person entitled to require compliance with those rules.
- (3) Where a relevant office-holder takes any action in respect of a defaulter which is liable to be dealt with in accordance with the default rules, and believes and has reasonable grounds for believing that he is entitled to take that action, he is not liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage, as the case may be, is caused by the office-holder's own negligence.

## **Preservation of rights, etc.**

- 116.** Except as is expressly provided in this Act, the provisions of Part XA of this Act shall not operate to limit, restrict or otherwise affect—
- (a) any right, title, interest, privilege, obligation or liability of any person; or
  - (b) any investigation, legal proceedings or remedy in respect of any such right, title, interest, privilege, obligation or liability.

## **Exemption from regulations on reporting of substantial shareholding and Division 3A of the Companies Act 1965**

**117.** The recognized clearing house and central depository, in carrying out its functions under this Part, shall be exempted from the requirements under the Securities Industry (Reporting of Substantial Shareholding) Regulations 1998 [*P.U. (A) 174/1998*] and Division 3A of the Companies Act 1965.”.

### **Amendment of section 120**

**46.** Section 120 of the principal Act is amended—

(a) by substituting for subsections (1) and (2) the following subsections:

“(1) A person who is not a participating organization shall not take or use or by inference adopt the name, title or description of “participating organization”, or take or use or have attached to or exhibited at any place any name, title or description implying or tending to create the belief that such person is a participating organization.

(2) Unless the Commission otherwise permits, a person who is not an exchange holding company or a stock exchange shall not take or use or by inference adopt the name, title or description of “exchange holding company”, “stock exchange”, “stock market” or “securities trading market”, or take or use or have attached to or exhibited at any place any name, title or description implying or tending to create the belief that such person is an exchange holding company or stock exchange.”;

(b) by substituting for subsection (5) the following subsection:

“(5) A person who is not a holder of a dealer’s licence, fund manager’s licence or an investment adviser’s licence shall not take or use or by inference adopt the name, title or description of “investment adviser” or “financial planner” or take or use or have attached to or exhibited at any place, any name, title, or description implying or tending to create the belief that such person is an “investment adviser” or “financial planner”.”; and

(c) in subsection (6)—

(i) by substituting for the words “fund manager’s representative” or “investment representative” the words “fund manager’s representative”, “investment representative” or “financial planner” respectively; and

- (ii) by substituting for the words "a fund manager's representative or an investment representative" the words "a fund manager's representative, an investment representative or a financial planner".

#### **Amendment of section 122B**

- 47.** Paragraph 122B(*dd*) of the principal Act is amended by deleting the words "or listing requirements".

#### **Amendment of section 124**

- 48.** Subsection 124(1) of the principal Act is amended by substituting for the words "Part IV, V or VII" the words "Part III, IV, V, VI, VII, X or XI".

#### **Amendment of section 126A**

- 49.** The principal Act is amended by substituting for section 126A the following section:

##### **"Indemnity**

**126A.** No civil liability shall be incurred by—

- (a) a stock exchange, an exchange holding company, a recognized clearing house or a central depository; and
- (b) any person acting on behalf of a stock exchange, an exchange holding company, a recognized clearing house or a central depository, including—
  - (i) any member of the board of the stock exchange, exchange holding company, recognized clearing house, central depository or any member of any committee established by any such board;
  - (ii) any officer of the stock exchange, exchange holding company, recognized clearing house or central depository; and
  - (iii) any agent of, or any person acting under the direction of the stock exchange, exchange holding company, recognized clearing house, or central depository,

for, on account of, or in respect of anything done, any statement made or omitted to be done or made, in connection with the discharge or performance or purported discharge or performance of any duties under the securities laws or the rules of the stock exchange, recognized clearing house and central depository or in the exercise or intended exercise of any

power under the securities laws or such rules, where such act, statement or omission was done in good faith.”.

### **Deletion of section 126B**

**50.** The principal Act is amended by deleting section 126B.

### **Savings and transitional**

- 51.** (1) All regulations, rules, orders, directions, notifications, approvals, decisions, guidelines, actions and other executive acts made, given, taken 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, taken or done under, or in accordance with, or by virtue of, the corresponding provision introduced or amended by this Act, and shall continue to remain in full force and effect in relation to any person to whom they apply until amended, revoked, repealed or rescinded under, in accordance with, or by virtue of, the corresponding provision introduced or amended by this Act.
- (2) Nothing in the principal Act or 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) Any right, privilege, obligation or liability acquired, accrued or incurred before the commencement of this Act or any legal proceedings, remedy or investigation in respect of such right, privilege, obligation or liability shall, in so far as it is not inconsistent with the provisions of this Act, continue to remain in force unless amended, revoked or rescinded under, in accordance with or pursuant to the provisions of the principal Act as amended by this Act, the Demutualisation (Kuala Lumpur Stock Exchange) Act 2003 [*Act 632*] or any regulations made under the principal Act or the Demutualisation (Kuala Lumpur Stock Exchange) Act 2003, pursuant to the coming into operation of this Act.
- (4) If immediately before the commencement of this Act, a person was a member company for the purposes of the principal Act, such person shall be regarded as a participating organization for the purposes of the principal Act as amended by this Act and shall have all the rights, powers, privileges, obligations and duties of a participating organization as set out in the principal Act as amended by this Act.
- (5) If any difficulty arises with respect to the application of any one or more of the provisions introduced or amended by this Act and the savings and transitional provisions, the Minister may, by order published in the *Gazette*,

make such modifications in any one or more of those provisions as may appear to him to be necessary to prevent anomalies.

### **Revocation of Securities Industry (Exempt Fund Manager) Order 1997**

- 52.** (1) The Securities Industry (Exempt Fund Manager) Order 1997 [*P.U. (A) 36/1997*] is revoked.
- (2) All persons to whom the Order referred to in subsection (1) applies shall be deemed to have been licensed as a fund manager from the date of the coming into operation of this section for a period of one year, after which Part IV of the principal Act as amended by this Act shall apply.