

**Securities Industry (Central Depositories)  
Act 1991**

**(Act 453)**

*Incorporating all amendments up to  
5 January 2004*

**Securities Commission**

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LAWS OF MALAYSIA  
SECURITIES INDUSTRY (CENTRAL DEPOSITORIES) ACT 1991  
*(Incorporating amendment – Act A1216/2003)*

**Act 453**

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**ARRANGEMENT OF SECTIONS**

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Section	Page
<b>PART I PRELIMINARY</b>	
1. Short title and commencement	1
2. Interpretation	1
<b>PART II CENTRAL DEPOSITORY</b>	
3. Restriction on establishment of a central depository	7
4. Application for approval to establish and maintain a central depository	7
5. Power of Minister to approve the establishment of a central depository	9
5A. Withdrawal of approval of a central depository	10
5B. Effect of withdrawal	11
5C. Arrangements as to the discharge of duties of exchange holding company and central depository	12
6. Minister may establish advisory committees	12
7. Commission to approve amendment to rules of central depository	13
8. Duty of a central depository to ensure orderly dealings in deposited securities	14
9. Authorised depository agents, issuers, etc., to comply with rules of a central depository	14
10. Central depository to provide assistance to the Commission	15
<b>PART III PROVISIONS RELATING TO DEPOSITED SECURITIES</b>	
<b>DIVISION I Deposit Of Securities</b>	
11. Interpretation	16
12. Duties of a central depository	16
13. Authorised depository agent	17
14. Stock exchange to prescribe securities that may be deposited with a central depository	18

15.	[Repealed]	20
16.	[Repealed]	20
17.	Undeposited securities not to be traded on a stock market or utilised to settle market trade	20
18.	Verification of scrips and transfer to a central depository or nominee company	20
19.	Central depository and authorised depository agent not liable for loss	22
20.	Issuance of jumbo certificates	22
21.	Central depository deemed a bare trustee	22

## DIVISION II Withdrawal Of Securities

22.	[Repealed]	23
23.	[Repealed]	23
24.	Prohibition of withdrawal	23

## DIVISION III Securities Accounts And Records

25.	Securities accounts	23
25A.	Authorised nominee shall hold deposited securities for one beneficial owner in respect of each securities account	24
26.	Issuance of statements of accounts	24
27.	Duty of central depository to keep certain records	24
28.	Physical stock count of scrips	25

## DIVISION IV Securities Transactions, Entries And Miscellaneous

29.	Dealings effected by means of electronic process	26
29A.	Dealings in deposited securities shall be effected by beneficial owners or authorised nominees	27
30.	Entries in securities accounts	27
31.	Entries in securities accounts in respect of direct business, etc.	27
32.	Entries in securities accounts to specify date, time and person making the entries	27
33.	Record of an entry prima facie evidence	27
34.	Record of depositors to be issued to issuer on request	28
35.	A depositor to be treated as if he were a member	29
36.	Prohibition against acquisition of, or dealings in, deposited securities by a central depository	30
37.	Public offer	30
38.	Bonus, rights issues, etc.	31
39.	Underwriters to open securities accounts	31
40.	Charging or pledging of securities	31
41.	Securities in suspense	32
41A.	Notice of trust	33

## **PART IV SECURITY PROVISIONS**

42.	Duty to take reasonable security measures	34
43.	Duty to maintain secrecy	34
44.	Restrictions on disclosure of information by authorised depository agents	34
45.	Permitted disclosures	34
46.	Regulation of access to the computer system	36

## **PART V OFFENCES**

47.	Falsification of records or accounts	37
48.	Destruction, concealment, mutilation and alteration of records prohibited	37
49.	Furnishing false or misleading information	38
50.	Offence by bodies corporate	38
51.	General penalty	38

## **PART VI INVESTIGATION**

52.	[Repealed]	39
53.	Power of Commission to require production of records	39
54.	[Repealed]	40
55.	[Repealed]	40
56.	Disclosure to Commission	40
57.	Investigation by Commission	41
58.	Power of Court to make certain orders	41
58A.	Application for winding up	45

## **PART VII GENERAL**

59.	Preservation of records and accounts	47
60.	Power of Commission to compound	47
61.	Criminal prosecution	47
61A.	Commission may be represented by officer in civil proceedings	48
61B.	Powers concerning compliance with rules of the central depository, etc.	48
62.	Indemnity	49
62A.	Power of exemption	50
63.	Regulations	50
64.	Reference to allottee in the Companies Act 1965	51
65.	[Repealed]	52
66.	Reference to owner in section 102 of the Companies Act 1965	52
67.	Reference to company in section 103 of the Companies Act 1965	52
68.	Reference to members of a public company in section 166 of the Companies Act 1965	52

## NOTES

Mandatory deposit by person holding undeposited securities [Act A1039:s.29]	53
Securities account to be opened in the name of beneficial owner [Act A1039]	54
Savings and transitional [Act A1216]	55
Prevention of anomalies [Act A1216]	55

## SECURITIES INDUSTRY (CENTRAL DEPOSITORIES) ACT 1991

Date of Royal Assent ..... 28 March 1991

Date of publication in the Gazette ..... 11 April 1991

# SECURITIES INDUSTRY (CENTRAL DEPOSITORIES) ACT 1991

## (Act 453)

An Act to provide for the regulation of central depositories, and the deposit, holding, withdrawal of, and dealings in, securities deposited therewith and to provide for matters incidental thereto.

[15 June 1992 – vide P.U.(B) 270/92]

BE IT ENACTED by the Duli Yang Maha Mulia Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

## PART I

### PRELIMINARY

#### 1. Short title and commencement.

- (1) This Act may be cited as the Securities Industry (Central Depositories) Act 1991.
- (2) This Act shall come into force on such date as the Minister may, by notification in the *Gazette*, appoint and the Minister may appoint different dates for the coming into operation of different provisions of this Act.

#### 2. Interpretation.

- (1) In this Act, unless the context otherwise requires–

“access”, in relation to a computer system, means the placing of information on that system and the retrieval of information from that system;

“Act” includes any regulations made under this Act;

“authorised depository agent”, in relation to any central depository, means a person appointed under section 13 to be an agent of that central depository;

“authorised nominee” means a person who is authorised to act as a nominee as specified under the rules of a central depository;

[*Ins. Act A1039:s.2*]

“bearer security” means a security the title to which is transferable by delivery (with or without endorsement) of the scrip representing such security;

“beneficial owner”, in relation to deposited securities, means the ultimate owner of the deposited securities who is the person who is entitled to all rights, benefits, powers and privileges and is subject to all liabilities, duties and obligations in respect of, or arising from, the deposited securities, and does not include a nominee of any description;

[Ins. Act A1039:s.2]

“buying in” means the buying effected by a stock exchange or its clearing house, according to the rules of the stock exchange, of securities which a seller has failed to deliver on a day fixed for settlement;

“Central Bank of Malaysia” means the Central Bank established under the Central Bank of Malaysia Act 1958 [Act 519];

[Ins. Act A942:s.2]

“central depository” means a company approved by the Minister under section 5–

- (a) to establish and operate a system for the central handling of securities, whether or not listed on any stock exchange,–
  - (i) whereby all such securities are deposited with and held in custody by, or registered in the name of, the company or its nominee company for the depositors and dealings in respect of those securities are effected by means of entries in securities accounts without the physical delivery of scrips; or
  - (ii) which permits or facilitates the settlement of securities transactions or dealings in securities without the physical delivery of scrips; and
- (b) to provide other facilities and services incidental thereto;

“charge” includes a mortgage;

“Commission” means the Securities Commission established under the Securities Commission Act 1993 [Act 498];

[Ins. Act A942:s.2]

“computer system”, in relation to a central depository, means the computer system established by a central depository forming part of the system for the central handling of securities which *inter alia* consists of–

- (a) the central equipment comprising hardware, and software associated with that hardware, located at the premises of the central depository; and
- (b) the terminals located at the premises of the users;

“dealer” has the same meaning as is assigned to that expression under subsection 2(1) of the Securities Industry Act 1983 [Act 280];

“dealing”, in relation to any deposited security, includes the charging or pledging of the deposited security by a depositor;

“debt securities” means debentures, bonds, notes, or other similar instrument representing or evidencing indebtedness, whether secured or otherwise;

“deposited security” means a security standing to the credit of a securities account and includes a security in a securities account that is in suspense;

“depositor” means a holder of a securities account;

“exchange holding company” has the same meaning as is assigned to that expression under subsection 2(1) of the Securities Industry Act 1983;

*[Ins. Act A1216:s.2]*

“information” includes data recorded in a form which can be processed by equipment operating automatically in response to instructions given for a particular purpose;

“Investigating Officer” *[Repealed by Act A1076:s.2]*

“issuer”, in relation to any deposited security, means the public company, corporation, government, or the body, corporate or unincorporate, which issued the security, and includes any person performing the functions of a registrar or an issuing house for such issuer in respect of such security;

“listed deposited security” means a deposited security quoted on an official list of a stock exchange;

“member company” *[Deleted by Act A1216:s.2]*

“Minister” means the Minister of Finance;

“nominee company”, in relation to a central depository, means a company appointed by the central depository for the purpose of holding any deposited security;

“non-bearer security” means a security other than a bearer security;

“official list”, in relation to a stock exchange, means a list specifying all securities which have been admitted for quotation on the stock exchange;

“participating organization” has the same meaning as is assigned to that expression under subsection 2(1) of the Securities Industry Act 1983;

*[Ins. Act A1216:s.2]*

“record” includes, in addition to a record in writing–

(a) any photograph;

- (b) any disc, tape, sound-track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced therefrom; and
- (c) any film, tape or other device in which visual images are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced therefrom,

and any reference to a copy of a record includes–

- (i) in the case of a record falling within paragraph (b) but not paragraph (c) of this definition, a transcript of the sounds or other data embodied therein;
- (ii) in the case of a record falling within paragraph (c) but not paragraph (b) of this definition, a still reproduction of the images embodied therein, whether enlarged or not; and
- (iii) in the case of a record falling within both paragraph (b) and paragraph (c) of this definition, the transcript of the sounds or other data embodied therein together with the still reproduction of the images embodied therein;

“Registrar” *[Repealed by Act A942:s.2]*

“rules”, in relation to–

- (a) a central depository, means the rules of a central depository, and includes–
  - (i) rules contained in the memorandum and articles of association or other constituent document of the central depository;
  - (ii) rules to ensure compliance by its authorised depository agents, users or depositors of any obligations imposed by this Act or any other written law;
  - (iii) rules in relation to the provision of services for the deposit, holding, transfer and withdrawal of securities, and the suspension or withdrawal of such services;
  - (iv) rules to provide for the persons who may participate in one or more of the services referred to in subparagraph (iii); and
  - (v) rules in respect of such other matters as are necessary or desirable for the proper and efficient operation and management of the central depository, including rules setting fees and charges; and
- (b) an exchange holding company, means the memorandum and articles of association, including rules regulating the activities and conduct of the company in its capacity as an exchange holding company;

*[Subs. Act A1216:s.2]*

“scrip” means any document that is, or is a document of title to, a security;

“security” means debenture, note, stock and share in a public company or corporation, or bond of any government or of any body, corporate or unincorporate, and includes any right or option in respect thereof, any interest as defined in section 84 of the Companies Act 1965 [Act 125] and any interest in a unit trust scheme;

*[Subs. Act A1016:s.2]*

“securities account” means an account established by a central depository for a depositor for the recording of deposit of securities and for dealings in such securities by the depositor;

*[Am. Act A1039:s.2]*

“securities laws” means this Act, the Securities Industry Act 1983, the Securities Commission Act 1993 and the Futures Industry Act 1993 [Act 499] and, unless expressly stated otherwise, includes any subsidiary legislation made under those laws;

*[Ins. Act A1039:s.2]*

“selling out” means the selling effected by a stock exchange or its clearing house, according to the rules of the stock exchange, of securities which a buyer has failed to accept and to pay for when delivered on a day fixed for settlement;

“stock exchange” has the same meaning as is assigned to that expression under subsection 2(1) of the Securities Industry Act 1983;

“stock market” has the same meaning as is assigned to that expression under subsection 2(1) of the Securities Industry Act 1983;

“unit trust scheme” has the same meaning as is assigned to that expression under section 2 of the Securities Commission Act 1993;

*[Ins. Act A1016:s.2]*

“unlisted deposited security” means a deposited security other than a listed deposited security;

“user” means—

- (a) an authorised depository agent;
- (b) an issuer;
- (c) a stock exchange;
- (d) a body corporate acting as a clearing house of a stock exchange; or
- (e) such other person as may be specified in the rules of a central depository, who may be given access to a computer system of the central depository.

*[Subs. Act A942:s.2]*

- (2) A reference to writing shall be deemed to include any mode of representing or reproducing letters, figures or marks in a visible form.
- (3) A reference to a security being deposited, or required to be deposited, with a central depository shall be construed as a reference to a deposit of or a requirement for the deposit of—
- (i) the scrip;
  - (ii) the instrument of transfer, if any; or
  - (iii) any other document representing the security,
- with the central depository.

## PART II

### CENTRAL DEPOSITORY

#### 3. Restriction on establishment of a central depository.

- (1) No person shall establish, maintain, operate or hold himself out as providing, maintaining or operating a system for the central handling of securities, whether or not listed on any stock exchange—
  - (a) whereby all such securities are deposited with and held in custody by, or registered in the name of, the person or his nominee for the depositors and dealings in respect of those securities are effected by means of entries in accounts without the physical delivery of scrips; or
  - (b) which permits or facilitates the settlement of securities transactions or dealings in securities without the physical delivery of scrips; or
  - (c) to provide other facilities and services incidental thereto.
- (2) Subsection (1) shall not apply to—
  - (a) a central depository;
  - (b) the Central Bank of Malaysia; and
  - (c) any person exempted by the Minister under section 62A.
- (3) A person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding RM10 million or to imprisonment for a term not exceeding 10 years or to both.  
*[Subs. Act A942:s.3]*

#### 4. Application for approval to establish and maintain a central depository.

- (1) Any company incorporated under the Companies Act 1965 which proposes to establish and maintain a central depository shall apply to the Minister in writing for approval.
- (2) An application made under subsection (1) shall be accompanied with the following:
  - (a) a copy of the memorandum and articles of association, duly verified by a statutory declaration made by a director of the applicant;
  - (b) a copy of the latest audited balance sheet, profit and loss account (together with any note thereon) and the reports, if any, of the auditors and the directors of the applicant;

- (c) a statement on the following:
    - (i) the name, place and date of incorporation of the applicant;
    - (ii) the registered office and place or proposed place of business of the applicant;
    - (iii) the names and addresses of the directors of the applicant and its related corporations, and of the substantial shareholders within the meaning of section 69D of the Companies Act 1965, of the applicant and its related corporations; and
    - (iv) the name of the stock exchange, if any, in respect of which the central depository will be established and maintained;
  - (d) operational information on the system to be established and maintained by the central depository;
  - (e) a copy of the rules that will apply to the central depository;
  - (f) the proposed fees and charges which will be imposed by the applicant in respect of the facilities and services to be provided by the central depository, including fees and charges for–
    - (i) the establishment and maintenance of securities accounts;
    - (ii) the deposit and withdrawal of securities;
    - (iii) the issuance of statements of accounts under section 26;
    - (iv) the effecting of entries in securities accounts in respect of transactions under section 31;  
*[Am. Act A1039:s.3]*
    - (v) the issuance of records of depositors under section 34;
    - (vi) the effecting of entries in securities accounts pursuant to any charges or pledges of deposited securities under section 40; and
  - (g) such other information or documents as may be required by the Minister or the Commission for the purposes of determining the application and the suitability of the applicant to establish and maintain a central depository.  
*[Am. Act A1216:s.3]*
- (2A) 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.  
*[Ins. Act A1216:s.3]*

- (3) At any time after receiving an application the Minister or the Commission may, by written notice, require the applicant to provide additional information or documents.

*[Am. Act A1216:s.3]*

## **5. Power of Minister to approve the establishment of a central depository.**

- (1) The Minister may, in writing, on the recommendation of the Commission approve an application made under section 4 for the establishment and maintenance of a central depository if he is satisfied—

*[Am. Act A1216:s.4]*

- (a) that the applicant is a company incorporated under the Companies Act 1965, and an exchange holding company or a stock exchange is a shareholder of the applicant;

*[Subs. Act A942:s.4; Am. Act A1216:s.4]*

- (b) that the rules of the applicant make satisfactory provision—

- (i) with respect to the conditions under which securities may be deposited with, held by, withdrawn from, or transferred within, the central depository;

- (ii) for the holding of securities deposited with the central depository or its nominee company;

- (iii) for the processing of dealings in deposited securities;

- (iv) for facilitating the settlement of deposited securities;

- (v) for the protection of the interests of depositors and the protection and control of information on deposited securities and dealings therein;

- (vi) for the monitoring of compliance with, and for the enforcement of, the rules of the central depository;

- (vii) with respect to the maintenance of a policy or policies of insurance, and the establishment and maintenance of compensation funds, for the purpose of settling claims by depositors against the central depository, its nominee companies and authorised depository agents; and

- (viii) generally for the carrying on of the business of the central depository with due regard to the interests of the public; and

- (c) that the establishment and maintenance of the central depository would promote the positive development of the capital market in Malaysia and that the interests of the public dealing with deposited securities (whether or not listed on a stock exchange) will be served by the granting of his approval.

- (2) The Minister may, in approving any application under subsection (1), impose—
- (a) requirements with respect to the paid-up or authorised capital of the central depository;
  - (b) conditions relating to the shareholdings of the members of the central depository; and
  - (c) any other requirements or conditions as he considers appropriate.
- (3) Without limiting the generality of the requirements and conditions specified under subsection (2), the Minister may in writing, on the recommendation of the Commission, amend or revoke any requirement or condition imposed under that subsection or impose new requirements and conditions, if the Minister is satisfied that it is appropriate to do so for the protection of depositors or the public interest or for the proper regulation of the stock market.

*[Ins. Act A1216:s.4]*

## **5A. Withdrawal of approval of a central depository.**

- (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 5 to the central depository, with effect from the date specified in the notice; or
  - (b) direct the central depository 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 depositors or in the public interest or for the proper regulation of the markets in securities, where any one or more of the following circumstances occur:
- (a) the central depository ceases to operate a system for the central handling of securities;
  - (b) the central depository is being wound up or otherwise dissolved, whether in Malaysia or elsewhere;
  - (c) the central depository has contravened any term or condition of its approval or is charged with any offence under any of the securities laws;
  - (d) the central depository has failed to comply with a condition, requirement or direction given under section 61B of this Act or section 11L of the Securities Industry Act 1983;

- (e) any information provided for the purposes of section 4 was false or misleading in a material particular;
  - (f) a judgment debt of the central depository 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 central depository;
  - (h) the central depository 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 central depository on its own accord applies to the Minister to withdraw the approval granted to it under section 5, and the Minister, on the recommendation of the Commission, deems it fit to do so.
- (3) For the purposes of paragraph (2)(a), a central depository shall be deemed to have ceased to operate a system for the central handling of securities if it has ceased to operate such system 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 central depository 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 central depository or ceasing to provide the services specified in the notice; or
  - (b) protecting the depositors or the public interest.
- (5) Where the Minister has granted permission to a central depository under subsection (4), the central depository shall not, by reason of its carrying on the activities in accordance with the permission, be regarded as having contravened section 3.
- (6) The Minister shall not take any action under subsection (1) without giving an opportunity to be heard.

*[Ins. Act A1216:s.5]*

## **5B. Effect of withdrawal.**

Any withdrawal of approval or direction issued under section 5A shall not operate so as to—

- (a) avoid or affect any agreement, transaction or arrangement entered into on the computer system operated by the central depository, whether the agreement,

transaction or arrangement was entered into before or, where subsection 5A(4) applies, after the withdrawal of the approval or issuance of the direction under section 5A; or

- (b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

*[Ins. Act A1216:s.5]*

### **5C. Arrangements as to the discharge of duties of exchange holding company and central depository.**

The relevant provisions of sections 11D and 11J of the Securities Industry Act 1983 shall apply to an exchange holding company and a central depository that is a subsidiary of an exchange holding company.

*[Ins. Act A1216:s.5]*

## **6. Minister may establish advisory committees.**

- (1) The Minister may establish an advisory committee in respect of a central depository whose function shall be—

- (a) to advise the central depository on matters relating to the services provided by such depository;
- (b) to make recommendations or proposals for improving the efficiency of the central depository; and
- (c) to perform such other functions as may be prescribed by the Minister by regulations made under this Act.

- (2) An advisory committee established under subsection (1) shall consist of the following members who shall be appointed by the Minister:

- (a) a Chairman;
- (b) a Deputy Chairman;
- (c) a representative each from—

- (i) the Commission;
- (ii) the Ministry of Trade and Industry;
- (iii) the Central Bank of Malaysia;
- (iv) a stock exchange; and
- (v) the central depository;

*[Subs. Act A942:s.5]*

- (d) not less than six but not more than eight other members who have had experience of, and have shown capacity in, matters relating to the capital market, finance or investment.
- (3) The Minister may appoint a person to be a temporary member of the committee during the temporary incapacity through illness, or during the temporary absence from Malaysia, of any member.
- (4) A member of the committee shall hold office for two years and shall be eligible for re-appointment.
- (5) The appointment of a member may be revoked by the Minister at any time without assigning any reason therefor.
- (6) A member may at any time resign his office by letter addressed to the Minister.

## **7. Commission to approve amendment to rules of central depository.**

- (1) If a central depository proposes to make amendments to its rules, the central depository shall submit to the Commission—
  - (a) the text of the proposed amendment; and
  - (b) an explanation of the purpose of the proposed amendment.
- (2) The Commission shall, within six weeks after the receipt of the submission of any proposed amendments under subsection (1), give notice in writing to the central depository that it approves, or disapproves of the proposed amendments, or any part of the proposed amendments, as the case may be.
- (3) No amendment to the rules of a central depository shall have effect unless they have been approved in writing by the Commission under subsection (2).
- (4) The Commission may, by a notice in writing, declare any class of rules of a central depository to be a class of rules whose amendments do not require the approval of the Commission under subsection (2), and accordingly any amendments to the rules of that central depository which belong to that class shall, subject to subsection (6), have effect notwithstanding that they have not been so approved under subsection (2).
- (5) Where the Commission is of the view that any amendment to the rules of a central depository made under subsection (4) does not fall within the class of rules declared by the Commission under that subsection as not requiring its approval, the Commission may, after consultation with the central depository, require the central depository to submit such rule or amendment, as the case may be, for its approval under subsection (2).
- (6) Any rule made or amended by the central depository which is the subject of a requirement made by the Commission under subsection (5) shall cease to have

effect from the date of the Commission making such requirement or such later date as the Commission may determine:

Provided that this subsection shall not have effect until a reasonable time has been given to the central depository to notify the persons affected by such rule or amendment.

- (7) Notwithstanding the provision of this section, the Commission may from time to time after consultation with a central depository, by a written notice require a central depository–
- (a) to make such rules, and within such period as may be specified in the notice; or
  - (b) to amend such rules, in such manner and within such period as may be specified in the notice.
- (8) A central depository which fails to comply with the provisions of subsection (1) or which fails to comply with a requirement or written notice made under subsection (5) or (7) respectively shall be guilty of an offence.

*[Subs. Act A942:s.6]*

## **8. Duty of a central depository to ensure orderly dealings in deposited securities.**

- (1) A central depository shall take all steps and do all things necessary to ensure orderly dealings in securities deposited or lodged with it.
- (2) A central depository may, in performing its function under subsection (1), give to an issuer of any deposited security directions–
- (a) to do a particular act or thing; or
  - (b) to refrain from doing a particular act or thing.
- (3) An issuer who fails to comply with any direction given by a central depository under subsection (2) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding RM50,000 or to imprisonment for a term not exceeding one year or to both.

## **9. Authorised depository agents, issuers, etc. to comply with rules of a central depository.**

- (1) Any person who is an authorised depository agent, an issuer, a depositor, or a user shall comply with, enforce or give effect to the rules of a central depository to the extent to which those rules purport to apply to such person.
- (2) For the purposes of this section, “rules” includes any direction given, from time to time, by a central depository to any person pursuant to any provision of this Act.

**10. Central depository to provide assistance to the Commission.**

*[Subs. Act A942:s.7]*

- (1) A central depository shall provide such assistance to the Commission as the Commission reasonably requires for the performance of its functions and duties under this Act.

*[Subs. Act A942:s.7]*

- (2) A person acting on behalf of or authorised by the Commission is entitled at all reasonable times to full and free access to any part of the premises of a central depository for the purpose of ensuring compliance with this Act.

*[Subs. Act A942:s.7]*

- (3) A person who refuses or fails, without lawful excuse, to allow a person acting on behalf of or authorised by the Commission access to any premises mentioned in subsection (2) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding RM100,000 or to imprisonment for a term not exceeding three years or to both.

*[Subs. Act A942:s.7]*

## PART III

### PROVISIONS RELATING TO DEPOSITED SECURITIES

#### DIVISION I

##### Deposit Of Securities

#### 11. Interpretation.

In this Part, unless the context otherwise requires—

“approved company auditor” has the same meaning as is assigned to that expression under subsection 4(1) of the Companies Act 1965;

“jumbo certificate”, in relation to a deposited security, means a certificate comprising not less than 50,000 units of securities of an issuer which is registered in the name of a central depository or its nominee company, as nominee for depositors;

“market day”, in relation to a stock exchange, means a day on which a stock market of the stock exchange is open for trading in securities;

“notification date”, means the date on which the notice pursuant to subsection 14(2) is given by a stock exchange;

“prescribed date”, in relation to any prescribed security, means the date specified in the notice given by a stock exchange under subsection 14(3) as being the last day on which the prescribed security may be traded on a stock market of the stock exchange unless such security has been deposited with the central depository;

*[Subs. Act A1039:s.4]*

“prescribed security” means a security which has been prescribed by a stock exchange to be deposited with a central depository under section 14;

“record of depositors” means a record provided by a central depository to an issuer under section 34 which contains the particulars specified in subsection (3) of the said section.

#### 12. Duties of a central depository.

(1) A central depository shall provide or cause to be provided all such facilities as may be necessary—

(a) to facilitate efficient deposit of securities;

*[Am. Act A1039:s.5]*

(b) to facilitate registration of dealings in deposited securities;

- (c) to ensure the safe custody of scrips and other documents representing deposited securities;
  - (d) to guard against falsification of any records or accounts required to be kept or maintained under the Act; and
  - (e) to establish a proper and efficient system for the verification, inspection, identification and recording of all securities deposited with the central depository.
- (2) The Minister may, from time to time, prescribe other duties to be performed by a central depository as he considers appropriate.

### **13. Authorised depository agent.**

- (1) Subject to this Act, a central depository may appoint any of the persons referred to in subsection (2) to be its authorised depository agent for all or any of the following purposes:
- (a) to facilitate the deposit of securities; *[Am. Act A1039:s.6]*
  - (b) to open, maintain and close securities accounts;
  - (c) to make entries in securities accounts;
  - (d) to collect such fees and charges imposed by the central depository as may be provided for under its rules; and
  - (e) such other incidental and ancillary purposes as may be specified by the rules of a central depository. *[Subs. Act A942:s.8]*
- (2) A central depository may appoint as its authorised depository agent any of the following:
- (a) a stock exchange;
  - (b) a body corporate acting as a clearing house of a stock exchange;
  - (c) a participating organization; *[Subs. Act A1216:s.6]*
  - (d) a bank, merchant bank or finance company licensed under subsection 6(4) of the Banking and Financial Institutions Act 1989 *[Act 372]*;
  - (e) an Islamic bank licensed under the Islamic Banking Act 1983 *[Act 276]*;
  - (f) a bank established under an Act of Parliament; or

(g) a body corporate of a type prescribed by the Minister under this Act,

and any authorised depository agent so appointed, in carrying out all or any of the purposes mentioned in subsection (1), shall, when so required by the central depository or the Commission, in respect of such purposes, be authorised to give, divulge, reveal or disclose to the central depository or the Commission any information or document relating to a securities account.

*[Subs. Act A942:s.8]*

(3) A person shall not act as an authorised depository agent or hold himself out to be an authorised depository agent unless he has been so appointed in writing by a central depository.

(4) A person who contravenes subsection (3) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding RM10 million or to imprisonment for a term not exceeding 10 years or to both.

#### **14. Stock exchange to prescribe securities that may be deposited with a central depository.**

(1) Subject to subsections (2) and (3), a stock exchange shall prescribe all securities listed or proposed to be listed for quotation on its official list that are required to be deposited with a central depository.

*[Subs. Act A1039:s.7]*

(2) A stock exchange shall give notice to the public of all securities prescribed by it to be deposited with the central depository by advertisement in not less than three daily national newspapers, one of which shall be in the national language and one in the English Language unless exempted by the Commission in writing.

*[Ins. Act A942:s.9]*

(3) A notice under subsection (2) shall identify the prescribed security and shall specify a prescribed date (not being less than one month from the date of publication of the notice) on or before which those securities shall be deposited.

*[Ins. Act A942:s.9]*

(3A) Subject to subsections (3B) and (3C), the requirement under subsections (1), (2) and (3) to deposit prescribed securities on or before the prescribed date shall not apply to such securities or class of securities as may be specified in the rules of a central depository subject to such terms and conditions as may be specified by the central depository.

*[Subs. Act A1039:s.7; Am. Act A1216:s.7]*

(3B) Where a holder of prescribed securities to whom subsection (3A) applies fails to comply with any term or condition specified by the central depository, the share registrar of the issuer shall transfer to the Minister all such securities or class of securities by way of an entry in a securities account in the name of the Minister.

*[Ins. Act A1216:s.7]*

- (3C) Where any securities or class of securities are transferred under subsection (3B), the provisions of subsections (8), (9), (10), (11) and (12) shall apply to such securities or class of securities.  
*[Ins. Act A1216:s.7]*
- (4) For the purposes of this Act, the deposit by a person of any prescribed security with an authorised depository agent of a central depository shall be deemed to be a deposit of such security with the central depository.
- (5) Where a stock exchange has prescribed a security to be deposited with a central depository under subsection (1), the prescription shall apply to any additional listing of such security and all other types of security issued by the same issuer for listing on the stock exchange and the provisions of subsections (1) and (2) shall not apply in respect of such additional listing and listing of other types of security.  
*[Subs. Act A1016:s.3]*
- (6) Upon prescription of any securities under subsection (1), a holder of such prescribed securities shall deposit such securities on or before the prescribed date.  
*[Ins. Act A1039:s.7]*
- (7) If a holder of a prescribed security fails to deposit such securities on or before the prescribed date, the share registrar or the issuer shall, after the prescribed date, transfer the securities to the Minister by way of an entry in a securities account in the name of the Minister.  
*[Ins. Act A1039:s.7]*
- (8) Any person whose securities are transferred under subsection (3B) or (7) may, within six months from the date of the transfer, appeal to the Commission by giving reasons for his failure to deposit the securities.  
*[Ins. Act A1039:s.7; Am. Act A1216:s.7]*
- (9) If the Commission is satisfied as to the reasons for the failure to deposit the securities, the Commission shall report its satisfaction to the Minister and the Minister shall re-transfer the securities to the person referred to in subsection (8) by way of an entry in a securities account.  
*[Ins. Act A1039:s.7]*
- (10) If after the expiry of the period specified in subsection (8), no appeal is filed with the Commission, the Minister may sell or dispose of such securities in such manner and at such time as he thinks fit and shall deal with the proceeds of the sale or disposal as if they were moneys paid to him pursuant to the law relating to unclaimed moneys.  
*[Ins. Act A1039:s.7]*
- (11) If any share registrar fails to transfer any securities as required under subsection (3B) or (7), the High Court shall, on the application of the Commission, make an order transferring such securities to the Minister, and such transfer shall be effected by way of an entry in a securities account in the name of the Minister who may then sell or dispose of such securities in such manner and at such time as he thinks fit and deal with the proceeds of the sale or disposal as if they were moneys

paid to him pursuant to the law relating to unclaimed moneys.

*[Ins. Act A1039:s.7; Am. Act A1216:s.7]*

- (12) Any share registrar who fails to effect the transfer required under subsection (3B) or (7) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding RM3 million for every security which is the subject matter of the offence.

*[Ins. Act A1039:s.7; Am. Act A1216:s.7]*

**15. [Repealed by Act A1039:s.8]**

**16. [Repealed by Act A1039:s.8]**

**17. Undeposited securities not to be traded on a stock market or utilised to settle market trade.**

- (1) A prescribed security may not, after the prescribed date, be traded on a stock market of a stock exchange unless such security has been deposited with a central depository.

*[Ins. Act A942:s.11]*

- (2) *[Repealed by Act A1039:s.9]*

- (3) A prescribed security which is deposited by a depositor with the central depository shall be capable of being utilised to settle a transaction which took place on a stock market of a stock exchange prior to the date of deposit of that prescribed security if the issuer registers the transfer of the security underlying such scrip in the name of the central depository or its nominee company and delivers the appropriate certificate to the central depository before the date for settlement of the transaction in accordance with the rules of the stock exchange.

*[Subs. Act A1039:s.9]*

**18. Verification of scrips and transfer to a central depository or nominee company.**

- (1) A central depository or its authorised depository agent, as the case may be, shall, within the period prescribed in the rules, after the deposit by any person of a scrip representing a prescribed security and the instrument of transfer in respect thereof, if any, lodge the scrip and instrument with the issuer of the security.
- (2) The issuer shall, on receipt of the scrip and instrument, forthwith do all such acts and things as may be necessary in order to register the transfer of the security underlying such scrip in the name of the central depository or its nominee company.
- (3) Without prejudice to the right of an issuer to refuse to register a transfer under any written law, the issuer shall refuse registration of the transfer mentioned in subsection (2) if—

- (a) it ascertains that the scrip is not a genuine scrip or is a scrip that was reported lost or destroyed; or
  - (b) in relation to any such security, it discovers that–
    - (i) there has been a duplication in the issuance of the scrip representing that security; or
    - (ii) such scrip is a scrip issued in excess of the issued share capital of the issuer; or
  - (c) it has been served with an order of a court of competent jurisdiction prohibiting any dealing in respect of the security underlying such scrip; or
  - (d) an order under regulation 8 of the Essential (Protection of Depositors) Regulations 1986 [*P.U.(A) 237/86*] has been made by the Central Bank of Malaysia and published in the *Gazette* preventing the person who deposited the scrip from dealing with any of his monies, properties or assets.
- (4) Within seven market days after a transfer is lodged with an issuer or within such longer period as may be allowed in writing by a central depository, the issuer shall (other than in any of the cases mentioned in subsection (3) above) complete and deliver the appropriate certificate to the central depository.
- (5) Section 105 of the Companies Act 1965 shall not apply in relation to any transfer required to be registered by an issuer pursuant to this section, but where an issuer refuses registration of such a transfer, it shall serve on the transferor and the central depository (being a transferee) a written notice giving the reasons for such refusal.
- [Am. Act A1039:s.10]*
- (6) Notwithstanding the provisions of section 103 of the Companies Act 1965, an instrument of transfer lodged with an issuer pursuant to subsection (1) shall be capable of registration in the name of a central depository or its nominee company if such instrument has been certificated by an authorised depository agent instead of being executed by the central depository or its nominee company.
- (7) For the purposes of this section–
- (a) an instrument of transfer shall be deemed to be certificated if it bears the words “certificate lodged for registration in the name of .... (name of central depository or its nominee company, as the case may be) ....” or words to the like effect;
  - (b) the certification of an instrument of transfer shall be deemed to be made by an authorised depository agent if–
    - (i) the person issuing the instrument is a person apparently authorised to issue certificated instruments of transfer on the agent’s behalf;

and

- (ii) the certification is signed by a person apparently authorised to certificate transfers on the agent's behalf;
  - (c) a certification that purports to be authenticated by a person's signature or initials (whether handwritten or not) shall be deemed to be signed by him unless it is shown that the signature or initials were not placed there by him or were not placed there by any other person apparently authorised to use the signature or initials for the purpose of certifying transfers on the agent's behalf.
- (8) An issuer which fails to comply with subsection (4) or (5) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding RM50,000 or to imprisonment for a term not exceeding one year or to both, and in the case of a continuing offence, shall, in addition, be liable to be punished with a daily fine not exceeding RM1,000 for every day during which the offence continues.
- (9) This section shall not apply to bearer securities.

## **19. Central depository and authorised depository agent not liable for loss.**

- (1) A central depository and its authorised depository agent shall not, except in the case of any wilful act, omission, neglect or default on the part of the central depository or its authorised depository agent, be liable for any loss, damage or liability suffered or incurred by any person in respect of a dealing in any security the transfer of which has been refused under section 18.
- (2) Subsection (1) shall not operate to relieve an authorised depository agent from any obligation imposed on it by the rules of a stock exchange in its capacity as a participating organization to effect any buying in, whether directly or otherwise, following a refusal to register a transfer under section 18.

*[Am. Act A1216:s.8]*

## **20. Issuance of jumbo certificates.**

- (1) A central depository may require an issuer of deposited securities to issue in the name of the central depository or its nominee company a jumbo certificate for such securities.
- (2) The issuer shall, upon receipt of a requirement under this section, forthwith take such action as may be appropriate for the issuance of the jumbo certificate to the central depository.
- (3) This section shall not apply to bearer securities.

## **21. Central depository deemed a bare trustee.**

For the purposes of paragraph 6A(9)(a) of the Companies Act 1965, a central depository or its nominee company shall, in relation to deposited securities which are registered in its name, be deemed to be a bare trustee.

## DIVISION II

### Withdrawal Of Securities

22. **[Repealed by Act 1039:s.11]**

23. **[Repealed by Act 1039:s.11]**

24. **Prohibition of withdrawal.**

A depositor shall not withdraw the securities which have been deposited with a central depository except in such manner as may be specified in the rules of the central depository.

*[Subs. Act A1039:s.12]*

## DIVISION III

### Securities Accounts And Records

25. **Securities accounts.**

(1) No person shall deal in deposited securities without first having a securities account.

(2) An authorised depository agent which deals in deposited securities as principal shall, in relation to such dealing, open and maintain a securities account with the central depository.

(3) A central depository may establish different types of securities accounts for different classes of persons.

(4) Every securities account opened with a central depository shall be in the name of the beneficial owner of the deposited securities or in the name of an authorised nominee.

*[Ins. Act A1039:s.13]*

(5) The person opening the securities account shall make a declaration in such manner as may be specified in the rules of the central depository that he is the beneficial owner of deposited securities or the authorised nominee, as the case may be.

*[Ins. Act A1039:s.13]*

(6) Any person who contravenes subsection (1), (2) or (5) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding RM3 million or to imprisonment for a term not exceeding 10 years or to both.

*[Ins. Act A1039:s.13]*

**25A. Authorised nominee shall hold deposited securities for one beneficial owner in respect of each securities account.**

- (1) Where an authorised nominee opens a securities such account under subsection 25(4), nominee shall only hold deposited securities for one beneficial owner in respect of each securities account.
- (2) An authorised nominee shall, in such manner and within such period as may be specified in the rules of the central depository, furnish to the central depository the name and other particulars of the beneficial owner of the securities deposited in the securities account, opened in the name of the authorised nominee.
- (3) An authorised nominee who contravenes subsection (1) or (2) shall be guilty of an offence and shall, on conviction, be liable to a fine of not exceeding RM3 million or to imprisonment for a term not exceeding 10 years or to both.

*[Ins. Act A1039:s.14]*

**26. Issuance of statements of accounts.**

- (1) A central depository shall issue to all depositors statements of accounts in respect of all deposited securities held in custody by, or registered in the name of, the central depository or its nominee company for the depositors at such time and in such manner as may be provided in the rules of the central depository.  
*[Subs. Act A942:s.14]*
- (2) Notwithstanding the provisions of subsection (1), a depositor may, at any time, by written notice, require the central depository to issue to him a statement of account in respect of all or any of the deposited securities for the time being held in custody by, or registered in the name of, the central depository or its nominee company on behalf of the depositor.
- (3) A central depository shall, on receipt of a written notice under subsection (2) and upon payment of any charges which may be imposed under the rules, issue to the depositor the statement so required.
- (4) A statement of account issued under this section shall be *prima facie* evidence of the truth of the matters specified in the statement.

**27. Duty of central depository to keep certain records.**

- (1) A central depository shall keep or cause to be kept such records and accounts, in sufficient detail, so as to show particulars of—
  - (a) all monies received or paid by the central depository, including dividends received in respect of any deposited securities and the disbursement of such dividends to depositors;
  - (b) all income received from commissions, fees, charges and other sources, and all expenses, commissions, and other payments made or paid by the central depository;

- (c) all assets and liabilities (including contingent liabilities) of the central depository;
  - (d) all deposited securities and particulars showing for whom the scrips and the instruments of transfer in respect of such scrips are held;  
[Am. Act A1039:s.15]
  - (e) all purchases and sales of deposited securities and particulars of other dealings made in respect thereof, the charges and credits arising therefrom, the identity of the buyer and seller of each of those deposited securities or, in the case of other dealings, the identity of the persons executing such dealings and the persons in whose favour such dealings are executed, as the case may be.
- (2) An entry in the records or accounts shall specify the date and time of making such entry and, in the case of an entry made by a person, the identity of such person.
  - (3) An entry in the records or accounts of a central depository shall, unless the contrary is proved, be deemed to have been made by, or with the authority of the central depository.
  - (4) The provisions of this section shall apply, *mutatis mutandis*, to every authorised depository agent.

## 28. Physical stock count of scrips.

- (1) For the purpose of verifying the accuracy of any record or account kept by it pursuant to this Act and for such other purposes as may be prescribed by the Minister by regulations made under this Act, a central depository shall, before or at the end of every quarter during a financial year (in this section referred to as the "prescribed period"), conduct a stock count of all scrips representing deposited securities and any other documents in relation therewith held in custody by, or in the name of, the central depository or its nominee company.
- (2) The central depository shall, within 21 days after the end of the prescribed period, submit–
  - (a) in the case where any of the deposited securities is a listed deposited security, to the stock exchange (on which the deposited security is listed), the issuers and the Commission; and  
[Subs. Act A942:s.15]
  - (b) in the case where none of the deposited securities is a listed deposited security, to the issuers and the Commission,  
[Subs. Act A942:s.15]

a report on the outcome of such stock count, and such report shall, if applicable, state what action the central depository proposes to take with regard to any deficiency in the number of scrips representing the deposited securities or any

other documents in relation therewith or with regard to any other inaccuracies in its records or accounts.

- (3) Notwithstanding the provisions of subsection (1), the Commission may, if the Commission considers it appropriate, at any time, conduct, or appoint an approved company auditor to conduct, a stock count of all scrips representing the deposited securities and any other documents in relation therewith.

*[Am. Act A1039:s.16]*

- (4) Where the Commission is not satisfied with the report submitted to it by a central depository under subsection (2), the Commission may conduct or appoint an approved company auditor to conduct the stock count pursuant to that subsection, and the costs and expenses incurred by the Commission or the approved company auditor, as the case may be, in respect of such stock count shall be borne by the central depository.

*[Subs. Act A942:s.15; Subs. Act A1039:s.16]*

- (5) The Commission may,—

- (a) upon receipt of a report from the central depository; or  
(b) upon receipt of a report from an auditor appointed by the Commission under subsection (3) or (4); or

*[Ins. Act A1039:s.16]*

- (c) after conducting a stock count pursuant to subsection (3) or (4),

give to the central depository such directions as it considers appropriate.

*[Ins. Act A1039:s.16]*

- (6) A central depository which fails, without lawful excuse, to comply with any direction given by the Commission under subsection (5) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding RM50,000.

*[Subs. Act A942:s.15]*

## **DIVISION IV**

### **Securities Transactions, Entries And Miscellaneous**

#### **29. Dealings effected by means of electronic process.**

- (1) Notwithstanding the provisions of any written law, a dealing by a depositor in respect of a deposited security shall be effected by means of an entry in the securities account of the depositor.
- (2) Subject to this Part, a dealing effected under this section shall be effective—
- (a) in the case of a non-bearer security, without the need for an instrument in writing; and

- (b) in the case of a bearer security, without the need for delivery of the scrip representing the security.

**29A. Dealings in deposited securities shall be effected by beneficial owners or authorised nominees.**

All dealings in respect of deposited securities shall only be effected by the beneficial owners of such deposited securities or an authorised nominee, as the case may be.

*[Ins. Act A1039:s.17]*

**30. Entries in securities accounts.**

An entry in a securities account in respect of a dealing shall–

- (a) in the case of a securities account established and maintained directly by a central depository, be deemed to have been made by, or with the authority of, the central depository; and
- (b) in the case of a securities account established through, and maintained by, an authorised depository agent on behalf of a central depository, be deemed to have been made by, or with the authority of, the authorised depository agent.

**31. Entries in securities accounts in respect of direct business, etc.**

- (1) Subject to subsection (2), a central depository and an authorised depository agent shall make an entry in the securities account in respect of direct business or other transactions executed in accordance with the rules of the central depository or the rules of the stock exchange, as the case may be.
- (2) The central depository or an authorised depository agent, as the case may be, may, before making an entry under subsection (1), require the production of any document or instrument evidencing such dealing.
- (3) For the purpose of subsection (1), “direct business” has the same meaning as is assigned to that expression in the rules of the stock exchange.

*[Subs. Act A1039:s.18]*

**32. Entries in securities accounts to specify date, time and person making the entries.**

An entry in a securities account made under sections 30 and 31 shall specify the date and time of the making of such entry and, in the case of an entry made by a person, the identity of the person making the entry.

**33. Record of an entry *prima facie* evidence.**

A record of an entry in a securities account in respect of a dealing in deposited securities shall be *prima facie* evidence of the truth of the matters so recorded.

### **34. Record of depositors to be issued to issuer on request.**

- (1) An issuer of any deposited security may, in the manner prescribed by rules of a central depository, require the central depository to issue to him a record of the depositors in whose securities accounts such securities stand in credit as at the date of the notice or such other date as may be specified in the notice.  

*[Subs. Act A1016:s.5]*
- (2) The record of depositors required by an issuer under subsection (1) shall be issued by the central depository within the following period:
  - (a) in a case where the issuer requires the issuance of a record of depositors—
    - (i) as at the date of the notice, no later than three market days from that date;
    - (ii) as at a date later than the date of the notice (in this section referred to as “the later date”), no later than three market days after the later date;
  - (b) in a case where the issuer requires the issuance of a record of depositors as at a date earlier than the date of such notice (not being a date earlier than one year), no later than one month after the date of the notice.
- (3) A record of depositors shall contain the names, addresses, the numbers of the identity cards issued under the National Registration Act 1959 [Act 78], if any, race, nationality, and such other information and particulars of the depositors as may be required by the issuer, and in the case of the issuer being a company having a share capital, a statement as to the number of the deposited securities acquired by each depositor.
- (4) The record of depositors obtained by an issuer under this section shall be available for inspection by any member of the issuer (including a depositor) without charge and by any other person, on payment of RM1 or such lesser sum as the issuer may require, in respect of each inspection.
- (5) Any member of an issuer or any other person may require the issuer to furnish him with a copy of the record of depositors, or of any part thereof, but only so far as it relates to the names, addresses, and the number of securities held, on payment in advance of RM1, or such lesser sum as the issuer may require, in respect of every hundred words or fractional part therefor required to be copied.
- (6) The copy of the record of depositors, or any part thereof, required under subsection (5) shall be supplied to the person who required such copy within a period of 21 days or within such longer period as the Commission considers reasonable in the circumstances, commencing from the day after the date of receipt of the request by the issuer.

*[Am. Act A942:s.16]*

### 35. A depositor to be treated as if he were a member.

(1) Notwithstanding the provision of the Companies Act 1965, a depositor of any deposited security whose name appears in the record of depositors shall be entitled to all rights, benefits, powers and privileges and be subject to all liabilities, duties and obligations in respect of, or arising from, such security (whether conferred or imposed by the Companies Act 1965, or the memorandum or articles of association of the issuer of such security, or otherwise) as if he were—

(a) a member registered in the register of members;  
*[Subs. Act A1016:s.6]*

(b) a holder registered in the register of debenture holders maintained by the issuer;  
*[Am. Act A1039:s.19]*

(c) a holder registered—  
(i) in the register of interest holders maintained by a management company under the Companies Act 1965; or  
*[Subs. Act A1016:s.6]*

(ii) in the register of unit holders maintained by a management company under section 117 of the Securities Commission Act 1993; or  
*[Am. Act A1076:s.3]*

(d) a person included in any other register maintained by the issuer in respect of or arising from any other securities issued by the issuer.  
*[Ins. Act A1039:s.19]*

instead of the central depository, or its nominee company, in whose name the deposited security is registered.  
*[Subs. Act A1016:s.6]*

(2) Notwithstanding the provisions of subsection (1), nothing in this section shall be construed so as to deem a record of depositors to be—

(a) a register of members maintained under section 158 of the Companies Act 1965;

(b) a register of debenture holders maintained under section 70 of the Companies Act 1965;

(c) a register of interest holders maintained under section 92 of the Companies Act 1965;  
*[Am. Act A1039:s.19]*

(d) a register of unit holders maintained under section 117 of the Securities Commission Act 1993; or  
*[Subs. Act A1016:s.6; Am. Act A1076:s.3]*

- (e) any other register maintained by an issuer in respect of or arising from any other securities issued by the issuer.

*[Ins. Act A1039:s.19]*

- (3) Notwithstanding the provisions of subsection (1), an authorised depository agent shall have a lien over unpaid deposited securities purchased for the account of a depositor including all such entitlements to all rights, benefits, powers and privileges and be subject to all such liabilities, duties and obligations that are referred to thereunder, and shall deal with such unpaid deposited securities in accordance with the rules of the stock exchange.
- (4) For the purpose of this section, “deposited security” does not include a security specified in the securities account as being in suspense pursuant to section 41 or any regulations made thereunder.

### **36. Prohibition against acquisition of, or dealings in, deposited securities by a central depository.**

- (1) No central depository shall purchase, acquire, or otherwise deal in, any deposited security as principal other than for such purpose and in such manner as may be permitted by the Minister under regulations made under this Act.
- (2) A central depository which contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding RM500,000 or to imprisonment for a term not exceeding two years or to both.

### **37. Public offer.**

- (1) Where, pursuant to section 14, a stock exchange prescribes that any security proposed to be listed for quotation on its official list be deposited with a central depository, the issuer of such security or the offeror, as the case may be, shall, in the prospectus issued by such issuer or offeror in respect thereof, notify the public of the fact that the security is one that has been so prescribed.
- (2) Upon completion of the allotment or allocation of such security, the issuer or offeror, as the case may be, shall immediately deliver or caused to be delivered to the central depository a record of all successful applicants together with such particulars as may be required by the central depository for the purpose of making appropriate entries in the securities accounts of the respective applicants, together with the scrips (in such denominations as may be specified by the central depository) registered in the name of the central depository or its nominee company.

*[Subs. Act A1039:s.20]*

- (3) For the purposes of this section, “offeror”, in relation to any security, means the owner of the security.
- (4) A reference to a security proposed to be listed on a stock exchange in this section shall be construed as a reference to a security which has been approved by the stock exchange to be listed for quotation on the official list of the stock exchange.

- (5) Without prejudice to subsection (2), the provisions in section 107 of the Companies Act 1965 shall not, in relation to the securities mentioned in subsection (1), apply to the issuer of such security.

### **38. Bonus, rights issues, etc.**

- (1) Where the issuer or offeror, in relation to any prescribed security–
- (a) makes a bonus issue, or issues securities under a rights issue or the conversion of any debt securities;
  - (b) issues securities pursuant to an exercise of any right or option to acquire securities in the share capital of the issuer; or
  - (c) makes an offer for sale of securities,

the issuer or the offeror shall notify the central depository of the names of all allottees or entitled persons together with such particulars as may be required by the central depository for the purpose of making appropriate entries in the securities accounts of the respective allottees or entitled persons, and shall deliver to the central depository the appropriate scrips (in such denominations as may be specified by the central depository) registered in the name of the central depository or its nominee company.

*[Subs. Act A1016:s.7; Subs. Act A1039:s.21]*

- (2) Unless he already has an existing securities account, a person shall open a securities account before acquiring any of the securities mentioned in subsection (1).
- (3) For the purposes of this section–
- (a) “entitled persons” means persons who have been allocated securities by an offeror in an offer for sale; and
  - (b) “offeror”, in relation to any security, means the owner of the security.

*[Subs. Act A1016:s.7]*

### **39. Underwriters to open securities accounts.**

Subject to sections 25 and 25A, any person intending to underwrite any security proposed to be listed on a stock exchange or any rights issue in respect of any deposited security shall open a securities account.

*[Subs. Act A1039:s.22]*

### **40. Charging or pledging of securities.**

- (1) Where a deposited security is charged or pledged by a depositor (in this section referred to as “chargor” or “pledgor”) in favour of any person (in this section referred to as “chargee” or “pledgee”), a central depository or an authorised depository agent, with or through whom the securities account of the depositor is maintained, shall, on a request in writing made by the depositor, chargee or

pledgee, as the case may be, transfer or cause to be transferred such security into the securities account of the chargee or pledgee, as the case may be, maintained for such purpose.

- (2) Where a request is made by chargee or pledgee as provided under subsection (1), such request shall be supported by documents evidencing such charge or pledge in his favour.
- (3) The securities account maintained by the chargee or pledgee pursuant to subsection (1) shall be designated as the "Pledged Securities Account".
- (4) Where a charge or pledge over a deposited security has been discharged or released, the central depository or its authorised depository agent, as the case may be, shall, upon receipt of a notice in writing from the chargee or pledgee confirming the same, transfer the deposited security into the securities account of the chargor or pledgor.
- (5) The provisions relating to the transfer or withdrawal of deposited securities shall apply, *mutatis mutandis*, to securities in the Pledged Securities Account.

#### **41. Securities in suspense.**

- (1) A central depository may specify that any deposited security in a securities account as being in suspense in any of the following circumstances:

*[Am. Act A942:s.18]*

  - (a) where the transfer of such security in the name of the central depository or its nominee company has not been, or cannot be, registered by its issuer under section 18;
  - (aa) where the central depository has reason to believe or is satisfied that there is a breach of the rules of the central depository, stock exchange or recognized clearing house;

*[Ins. Act A1039:s.23]*
  - (ab) where the central depository has been served with a notice by the Commission that the Commission suspects or has reason to believe that a provision of a securities law has been contravened and that a securities account of a depositor is relevant to its investigations regarding the contravention;

*[Ins. Act A1039:s.23]*
  - (b) where the central depository has been served with an order of a court of competent jurisdiction prohibiting any dealing in respect of a deposited security;
  - (c) where an order under regulation 8 of the Essential (Protection of Depositors) Regulations 1986 has been made by the Central Bank of Malaysia and published in the *Gazette*;

(d) *[Repealed by Act A1039:s.23]*

(e) such other circumstances as may be prescribed by the Minister by regulations made under this Act.

*[Am. Act A1039:s.23]*

(2) In the case of a security that is specified in the securities account as being in suspense pursuant to subsection (1)–

*[Subs. Act A1039:s.23]*

(a) the rights, benefits, powers and privileges of a depositor; and

(b) the liabilities, duties and obligations of a depositor,

in respect of, or arising from, the suspension of such a security, shall be as prescribed by the Minister by regulations under this Act.

*[Ins. Act A942:s.18]*

#### **41A. Notice of trust.**

No notice of any trust, expressed, implied or constructive, shall be receivable by the central depository and the central depository or anything done by the central depository in relation to deposited securities shall not be affected by notice of any such trust.

*[Ins. Act A1016:s.8]*

## PART IV

### SECURITY PROVISIONS

#### 42. Duty to take reasonable security measures.

Every central depository and authorised depository agent shall take all reasonable security measures to protect information and documents relating to the affairs of the depositors, and in particular, relating to their securities accounts, against any unauthorised access, alteration, disclosure or dissemination.

#### 43. Duty to maintain secrecy.

- (1) Except as provided in this Act, no director or officer of a central depository or an authorised depository agent, whether during his tenure of office or during his employment or thereafter, and no other person who has by any means access to any information or document whatsoever relating to the affairs of any of the depositors, and in particular, relating to their securities accounts, shall give, divulge, reveal or otherwise disclose such information or document to any person.
- (2) No person who has any information or document which to his knowledge has been disclosed in contravention of subsection (1) shall in any manner howsoever disclose the same to any other person.
- (3) A person who contravenes this section shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding RM3 million or to imprisonment for a term not exceeding five years or to both.

#### 44. Restrictions on disclosure of information by authorised depository agents.

Except as provided in subsection 13(2), nothing in this Act shall authorise an authorised depository agent who is—

- (a) a licensed institution as defined in the Banking and Financial Institutions Act 1989;  
or
- (b) an Islamic bank licensed under the Islamic Banking Act 1983,

to give, divulge, reveal or otherwise disclose any information or document to any person in contravention of those Acts.

#### 45. Permitted disclosures.

- (1) Subject to the provisions of this Act, nothing in any other law or section 43 shall entitle any person to refuse to disclose any information or document—
  - (a) which the depositor, or his personal representative, has given permission in writing to disclose;

- (b) in a case where the depositor is declared a bankrupt, or, if the depositor is a corporation, the corporation is being or has been wound up, in Malaysia or in any country, territory or place outside Malaysia;
- (c) for the purpose of instituting or, in the course of, any civil proceedings–
  - (i) between a central depository or an authorised depository agent and a depositor relating to the securities account of the depositor; or
  - (ii) between a central depository or an authorised depository agent and two or more parties making adverse claims to securities or monies in the securities account of the depositor, where the central depository or authorised depository agent seeks relief by way of interpleader;
- (d) to any person duly authorised to investigate into any offence under any law, such disclosure being, in any case, limited to the securities account and affairs of the depositor suspected of the offence;
- (e) to a central depository for purposes of the compilation of the record of depositors, or any part thereof, under section 34 of this Act;
- (f) to an issuer in respect of a record of depositors issued under section 34 of this Act;
- (g) for the purpose of enabling or assisting the Minister to exercise any power conferred on him by this Act or by any other written law;
- (h) for the purpose of enabling or assisting the Central Bank of Malaysia to discharge its functions under the Central Bank of Malaysia Act 1958, the Banking and Financial Institutions Act 1989 and the Islamic Banking Act 1983 or any other written law;
 

*[Subs. Act A942:s. 19]*
- (i) for the purpose of enabling or assisting the Commission to discharge its functions under this Act;
 

*[Subs. Act A942:s. 19]*
- (j) for the purpose of enabling or assisting a stock exchange or clearing house of a stock exchange to discharge its functions;
- (k) for the purpose of enabling or assisting auditors of a central depository and authorised depository agents to discharge their functions;
- (l) in a summary or collection of information, framed in such a way so as not to enable the identity of any depositor, to whom the information relates, to be ascertained.

- (2) Subject to the provisions of this Act, nothing in section 43 shall entitle any person to refuse to disclose any information or document to the Minister or the Commission if the disclosure is required in the interest of investors or in the public interest.

*[Ins. Act A942:s.19]*

#### **46. Regulation of access to the computer system.**

- (1) Subject to any regulations made under subsection (2), a central depository may give to its authorised depository agents, a stock exchange (on which the deposited securities are listed), a clearing house of such stock exchange, issuers and any other person as may be specified in the rules of the central depository, access to its computer system.

*[Subs. Act A942:s.20]*

- (2) The Minister may, for the purpose of regulating access to the computer system, prescribe by regulations the extent to which any user or class of users may have, or should be prohibited from having, access to such system.

- (3) Any person who—

- (a) being a user, unlawfully gains access, or attempts to gain access, to a computer system of a central depository, whether by means of any device or apparatus forming part of the computer system or by any other means, beyond the extent to which he is authorised to have access by the central depository under subsection (1) or under any regulations made by the Minister under paragraph 63(2)(r);

*[Ins. Act A942:s.20]*

- (b) unlawfully gains access, or attempts to gain access, to a computer system of a central depository, whether by mean of any device or apparatus forming part of the computer system or by any other means; or

- (c) unlawfully interferes with, or impedes, or attempts to interfere with or impede, the operation of a computer system of a central depository,

shall be guilty of an offence.

- (4) A person who is guilty of an offence under this section shall, on conviction, be liable to a fine not exceeding RM10 million or to imprisonment for a term not exceeding 10 years or to both.

## PART V

### OFFENCES

#### 47. Falsification of records or accounts.

Where a central depository or its authorised depository agent keeps or maintains a record or an account that is required to be kept or maintained under any of the provisions of this Act by means of a mechanical device, an electronic device, or any other device, any person who—

- (a) records or stores, by means of that device, information that he knows or ought to know to be false or misleading in a material particular;
- (b)
  - (i) falsifies; or
  - (ii) with intent to falsify, destroys or removes—
    - (aa) information that is recorded or stored by means of that device;
    - (bb) information that has been prepared for the purpose of being recorded or stored by means of that device;
    - (cc) information that has been prepared for use in compiling records;
    - (dd) information that has been prepared for use in recovering other information that has been recorded or stored by means of that device;
- (c) having a duty to record or store information by means of that device, fails to record or store such information—
  - (i) with intent to falsify, wholly or in part, any entry made, or record intended to be compiled, from the information that has been recorded or stored; or
  - (ii) knowing that the failure to so record or store the information will render false or misleading in a material particular other information so recorded or stored,

shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding RM10 million or to imprisonment for a term not exceeding 10 years or to both.

#### 48. Destruction, concealment, mutilation and alteration of records prohibited.

A person who—

- (a) destroys, conceals, mutilates or alters any record or account required to be kept or maintained under any of the provisions of this Act; or

- (b) sends or attempts to send or conspires with any other person to send out of Malaysia any such record or account,

with intent to defraud any person, or to prevent, delay or obstruct the carrying out of an examination, investigation or audit, or the exercise of a power under this Act shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding RM10 million or to imprisonment for a term not exceeding 10 years or to both.

#### **49. Furnishing false or misleading information.**

- (1) Any person who furnishes any information which he knows to be false or misleading in a material particular or recklessly furnishes any information which is false or misleading in a material particular—

(a) for the purpose of, or in connection with, any application under this Act;  
or

(b) in purported compliance with any requirement imposed on him by or under this Act,

shall be guilty of an offence.

- (2) Any person who is guilty of an offence under this section shall, on conviction, be liable to a fine not exceeding RM1 million or to imprisonment for a term not exceeding 10 years or to both.

*[Subs. Act A942:s.21]*

#### **50. Offence by bodies corporate.**

Where offence against this Act has been committed by a body corporate, any person who at the time of the commission of the offence was a director, an executive officer or the secretary of the body corporate or was purporting to act in such capacity, shall be deemed to have committed that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all due diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

#### **51. General penalty.**

A person who contravenes or fails to comply with any of the provisions of this Act or of any regulations made thereunder shall be guilty of an offence under this Act and, where no penalty is expressly provided, shall, on conviction, be liable to a fine not exceeding RM1 million or to imprisonment for a term not exceeding five years or to both.

*[Subs. Act A942:s.22; Subs. Act A1039:s.25]*

**PART VI**  
**INVESTIGATION**

**52. [Repealed by Act A1076:s.5]**

**53. Power of Commission to require production of records.**

(1) The Commission may, at any time, if it considers there is sufficient reason to do so, by writing—

(a) give a direction to—

(i) a central depository;

(ii) a nominee company of a central depository;

(iii) an authorised depository agent;

(iv) a user;

(v) a person who is or has been an officer or employee of, or an agent, advocate and solicitor, auditor, or other person acting in any capacity for or on behalf of, a central depository, or its nominee company, or an authorised depository agent, or a user,

requiring the production, to the Commission, of such records or accounts as are so specified, being records and accounts relating to—

(vi) the business or affairs of a central depository or its nominee company, or an authorised depository agent, or a user;

(vii) any record or account required to be kept pursuant to section 27;  
or

(b) give a direction to any person requiring the production, to the Commission, of any record or account relating to matters mentioned in subparagraph (a)(vi) or (a)(vii) that are in the custody or under the control of the person:

Provided that the production of such record or account shall not be required at such times and at such places as shall interfere with the proper conduct of the normal daily business of that person.

*[Subs. Act A942:s.24]*

(2) A reference in subsection (1) to a business carried on by a person shall be deemed to include a reference to a business carried on by a person as trustee.

- (3) Where the Commission requires the production of any record or account under this section and a person has a lien on the record or account, the production of such record or account shall not prejudice the lien.

*[Subs. Act A942:s.24]*

- (4) *[Repealed by Act A1076:s.6]*

- (5) A power conferred by this section to make a requirement of a person extends, if the person is a body corporate, to making that requirement of any person who is or has been an officer of the body corporate.

- (6) A person who, without lawful excuse, refuses or fails to comply with a requirement made under this section shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding RM1 million or to imprisonment for a term not exceeding 10 years or to both, and in the case of a continuing offence, shall, in addition, be liable to be punished with a daily fine not exceeding RM1,000 for every day during which the offence continues after the fourteenth day from the date such person is required to comply with such requirement.

*[Subs. Act A942:s.24]*

**54. [Repealed by Act A1076:s.7]**

**55. [Repealed by Act A1076:s.8]**

**56. Disclosure to Commission.**

- (1) The Commission may require a central depository or its authorised depository agent to disclose to the Commission, in relation to any acquisition or disposal of deposited securities, any information including the name of the person from or through whom or on whose behalf the securities were acquired or to or through whom or on whose behalf the securities were disposed of, their securities account numbers and the entries made in such securities accounts and the nature of the instructions given to the central depository or its authorised depository agent in respect of such acquisition or disposal.

*[Subs. Act A942:s.27]*

- (2) The Commission may require a depositor to disclose to the Commission whether he acquired or disposed of the deposited securities, as the case may be, as trustee for, or on behalf of, another person and, if he acquired or disposed of those securities as trustee for, or on behalf of, another person, to disclose the name of that other person and the nature of any instructions given to the depositor in respect of the acquisition or disposal.

*[Subs. Act A942:s.27]*

- (3) A person who, without reasonable excuse, fails to comply with the requirement of the Commission under subsection (1) or (2) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding RM1 million or to imprisonment for a term not exceeding 10 years or to both.

*[Subs. Act A942:s.27]*

## 57. Investigation by Commission.

Where the Commission has reason to suspect that a person has committed an offence under a provision of this Act or is about to do an act that, if done, would be an offence under a provision of this Act, the Commission may make such investigation as the Commission thinks in accordance with the provisions of Part V of the Securities Commission Act 1993.

*[Subs. Act A942:s.28; Subs. Act A1076:s.9]*

## 58. Power of Court to make certain orders.

(1) Where—

- (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 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;

*[Subs. Act A1216:s.9]*

- (b) on an application by an exchange holding company or a central depository, 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 to remedy the contravention or mitigate the effect of such contravention; or

*[Subs. Act A1216:s.9]*

- (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,

*[Ins. Act A1216:s.9]*

the High Court may, without prejudice to any orders it would be entitled to make otherwise than pursuant to this section, make one or more of the following orders:

- (aa) in the case of persistent or continuing breaches of this Act, or of the rules of a central depository, an order restraining a person from acting as an authorised depository agent or from holding himself out as so acting;
- (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;  
*[Subs. Act A1216:s.9]*
- (cc) an order restraining the exercise of any voting or other rights attached to any securities that are specified in the order;
- (dd) an order appointing a receiver of the property of an authorised depository agent or of property that is held by an authorised depository agent for or on behalf of another person whether on trust or otherwise;
- (ee) an order vesting securities that are specified in the order in the Commission or a trustee appointed by the High Court;
- (ff) an order declaring the whole or any part of a contract relating to securities including a contract for the acquisition or disposal of securities, to be void, and if the High Court thinks fit, to have been void *ab initio* or at all times on or after a specified date before the order is made;
- (gg) where a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do any act or thing that he is required to do under a relevant requirement, an order requiring such person to do such act or thing;  
*[Am. Act A1216:s.9]*
- (hh) in a case of a contravention by a person of the rules of a central depository, an order giving directions concerning compliance with or enforcement of those rules to—
  - (i) the person; and
  - (ii) if the person is a body corporate, the directors of the body corporate;
- (ii) in a case where the person is a director, an order removing him from office and that he be barred from becoming a director of any other public company for such period of time as may be determined by the High Court;
  - (iia) an order restraining the contravention;  
*[Ins. Act A1216:s.9]*

(iib) 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 mitigate its effect, including making restitution to any other person aggrieved by such contravention;

*[Ins. Act A1216:s.9]*

(jj) for the purpose of securing compliance with any other order under this section, an order directing a person to do or refrain from doing a specified act; and

(kk) any ancillary order deemed to be desirable in consequence of the making of an order under any of the preceding provisions of this subsection.

(2) The High Court may, before making an order under subsection (1), direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

(3) Where an application is made to the High Court for an order under paragraph (1)(gg), the High Court may grant the order—

(a) where the High Court is satisfied that the person has refused or failed to do the required act or thing, whether or not it appears to the High Court that the person intends to again refuse or fail, or continue to refuse or fail, to do the required act or thing; or

(b) where it appears to the High Court that in the event that such an order is not granted it is likely that the person will refuse or fail to do the required act or thing, whether or not the person has previously refused or failed to do the act or thing and whether or not there is any imminent risk of damage to any person if the person required to do such act or thing refuses or fails to do so.

(4) Where an application for an order under subsection (1) is made by the Commission or any person duly authorised by the Commission, or a central depository, the High Court shall not, as a condition of the grant of the order, require any undertaking as to damages to be given by or on behalf of the Commission or the central depository.

(5) A person appointed by order of the High Court under paragraph (1)(dd) as a receiver of the property of an authorised depository agent—

(a) may require the authorised depository agent to deliver to the receiver any property of which he has been appointed receiver or to give to the receiver all information concerning that property that may reasonably be required;

(b) may acquire and take possession of any property of which he has been appointed receiver;

- (c) may deal with, including dispose of, any property that he has acquired or of which he has taken possession in any manner in which the authorised depository agent might lawfully have dealt with the property; and
  - (d) shall have such other powers in respect of the property as the High Court specifies in the order.
- (6) For the purposes of paragraph (1)(dd) and subsection (5), "property", in relation to an authorised depository agent, includes monies, securities, and documents of title to securities or other property entrusted to or received on behalf of any other person by the authorised depository agent or another person in the course of or in connection with the business of the authorised depository agent.
- (7) The Commission or a trustee appointed by an order of the High Court under paragraph (1)(ee)–
  - (a) may require the authorised depository agent to deliver to the Commission or trustee, as the case may be, the securities specified in the order and to give to the Commission or trustee all information concerning the securities that may reasonably be required;
  - (b) may acquire and take possession of the securities specified in the order;
  - (c) may deal with, including dispose of, the securities specified in the order in any manner as it deems fit; and
  - (d) shall have such other powers in respect of the securities as may be specified in the order.
- (8) The proceeds of the dealing in or disposal of property under paragraph (5)(c) and of securities under paragraph (7)(c) shall be paid into the High Court, and any person claiming to be beneficially entitled to the whole or any part of such proceeds may, within 30 days of such payment into the High Court, apply to the High Court for payment out of the proceeds to him.
- (9) A person who contravenes or fails to comply with–
  - (a) an order under subsection (1) that is applicable to him;
  - (b) a requirement of a receiver appointed by order of the High Court under paragraph (1)(dd); or
  - (c) a requirement of the Commission or trustee appointed by order of the High Court under paragraph (1)(ee);

shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding RM3 million or to imprisonment for a term not exceeding 10 years or to both.

(10) Subsection (9) does not affect the powers of the High Court in relation to the punishment for contempt of court.

(11) The High Court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

*[Subs. Act A1039:s.26]*

(12) 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 that is given under or pursuant to this Act;

(iii) which is imposed by or under the rules of a central depository; or

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

(b) in relation to an application by the exchange holding company or central depository, means a requirement which is imposed by or under the rules of the central depository, 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 that is given under or pursuant to this Act; or

(iii) which is imposed by or under the rules of a central depository.

*[Ins. Act A1216:s.9]*

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

*[Ins. Act A1216:s.9]*

## **58A. Application for winding up.**

(1) Notwithstanding the provisions of the Companies Act 1965, if a person referred to in subsection 58(1) is a company, whether or not the company is being wound up voluntarily, the person may be wound up under an order of the Court on the petition of the Commission or a central depository in accordance with the provisions of the Companies Act 1965 [Act 125].

- (2) The Court may order the winding up on a petition made under subsection (1) if the person referred to in subsection 58(1)–
- (a) has been appointed as an authorised depository agent under section 13 and that appointment has been terminated; or
  - (b) has contravened any rules of the central depository or any provision of the securities law, whether or not that person has been charged with an offence in respect of the contravention, or whether or not the contravention has been proved in prosecution.

*[Ins. Act A1039:s.27]*

## PART VII

### GENERAL

#### 59. Preservation of records and accounts.

A central depository and its authorised depository agents shall preserve all records and communications in relation to a depositor's account and such other records and accounts as will sufficiently explain the transactions and operations of the central depository and authorised depository agents in relation to deposited securities, for a period of seven years, whether or not they cease to carry on their business before the end of their seventh year.

*[Subs. Act A942:s.30]*

#### 60. Power of Commission to compound.

(1) The Commission may, with the concurrence of the Public Prosecutor, without instituting proceedings against any person for an offence under this Act other than offences under subsections 3(2), 13(4), 43(3) and 46(3) and sections 47 and 48, compound any offence by demanding and receiving from such person a sum not exceeding 50% of the amount of the maximum fine (including the daily fine, if any) to which the person would have been liable if he had been convicted of the offence, whereupon—

(a) if such person pays such amount to the Commission within 14 days after the demand, proceedings shall not be taken against him in relation to the offence; or

(b) if such person does not pay the amount so demanded within 14 days, the Commission may cause proceedings to be instituted in relation to the offence.

*[Am. Act A942:s.31]*

(2) Any moneys paid to the Commission pursuant to subsection (1) shall be paid into and form part of the Federal Consolidated Fund.

*[Ins. Act A942:s.31]*

#### 61. Criminal prosecution.

(1) No prosecution for any offence under this Act shall be instituted except with the consent in writing of the Public Prosecutor.

(2) Any officer may, if he is authorised in writing by the Public Prosecutor, prosecute any case in respect of any offence committed under this Act.

*[Am. Act A1016:s.9]*

(3) For the purpose of subsection (2), "officer" has the same meaning as in section 2 of the Securities Commission Act 1993.

*[Subs. Act A942:s.32]*

## **61A. Commission may be represented by officer in civil proceedings.**

- (1) Notwithstanding the provisions of any written law—
  - (a) in any civil proceedings by or against the Commission; or
  - (b) in any other civil proceedings in which the Commission is required or permitted by the court to be represented, or to be heard, or is otherwise entitled to be represented or to be heard,

any officer authorised by the Commission for the purpose may, on behalf of the Commission, institute such proceedings or appear as an advocate therein and may make all appearances and applications and do all acts in respect of such proceedings on behalf of the Commission.

- (2) For the purpose of subsection (1), “officer” has the same meaning as in section 2 of the Securities Commission Act 1993.

*[Ins. Act A1016:s.10]*

## **61B. Powers concerning compliance with rules of the central depository, etc.**

- (1) Where any person fails to comply with, observe, enforce or give effect to any requirement or provision of this Act or any regulations made under this Act, or any conditions of an appointment or approval under or pursuant to this Act or any rules of a central depository, in circumstances where the person is under an obligation to comply with, observe, enforce or give effect to such requirements or provisions, that person has committed a breach.
- (2) If a person has committed a breach and the Commission is satisfied that it is appropriate in all the circumstances to take action against that 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 the requirements or provisions of this Act or any regulations made under this Act or any conditions of an appointment or approval under or pursuant to this Act or rules of a central depository which he has failed to comply with, observe, enforce or give effect to;
  - (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 RM1 million;
  - (c) reprimand the person in breach;
  - (d) instruct the central depository—
    - (i) to specify any securities account or any deposited security in a securities account of the person in breach as being under suspense; or

- (ii) to specify any deposited security in a securities account of the person in breach as being in suspense; or
  - (e) require the person in breach to take such steps as the Commission may direct to remedy the breach or mitigate the effect of such breach, including making restitution to any other person aggrieved by such breach.
- (3) For the purposes of paragraph (2)(e), in determining whether or not restitution is to be made by a person in breach, the Commission shall have regard to—
  - (a) the profits that have accrued to such person in breach; or
  - (b) whether any person has suffered loss or been otherwise adversely affected as a result of the breach.
- (4) Nothing in this section shall preclude—
  - (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 or central depository, as the case may be, from taking any action under the relevant rules.
- (5) For the purposes of this section—
  - (a) “in suspense” shall have the same meaning as is assigned to that expression under section 41;
  - (b) “under suspense” shall have the meaning as is assigned to that expression under the rules.

*[Ins. Act A1216:s.10]*

## **62. Indemnity.**

No civil liability shall be incurred by—

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

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 this Act or the rules or in the exercise or intended exercise of any power under this Act or the rules, where such act, statement or omissions was done in good faith.

*[Subs. Act A1216:s.11]*

## **62A. Power of exemption.**

- (1) The Minister may, if he considers it not inconsistent with the purposes of this Act or in the interest of the public or investing public, by order published in the *Gazette*, exempt any particular person or particular security, or any class, category or description of persons or securities, from all or any of the provisions of this Act.
- (2) An exemption under subsection (1) shall be granted for such duration, and may be subject to such limitations, restrictions or conditions, as the Minister may specify in the order.

*[Ins. Act A942:s.33]*

## **63. Regulations.**

- (1) The Minister may, from time to time, make such regulations as may be necessary or expedient for carrying out or achieving the objects and purposes of this Act.
- (2) Without prejudice to the generality of subsection (1), regulations may be made for—
  - (a) prescribing forms for the purposes of this Act;
  - (b) prescribing fees to be paid in respect of any matter or thing required for the purposes of this Act;
  - (c) prescribing the manner and form in which securities accounts are to be opened, maintained or closed by a central depository and its authorised depository agents, including the manner of making entries in such accounts;
  - (d) prescribing the circumstances when a deposited security in a securities account may be specified by a central depository as being in suspense under section 41 including the rights, benefits, powers, privileges, liabilities, duties and obligations of a depositor in respect of or arising from the suspension of such a security;  
*[Ins. Act A942:s.34]*
  - (e) regulating the appointment of authorised depository agents and authorised nominees and the imposition of duties, obligations and sanctions on such agents and nominees;  
*[Subs. Act A1039:s.28]*
  - (f) regulating the setting-up and operation of the computer system including computer terminals which form part of such system;

- (g) regulating the manner in which deposited securities shall be kept for safe custody by a central depository;
- (h) regulating all matters relating to the deposit of unlisted securities with a central depository and its authorised depository agents;
- (i) *[Repealed by Act A942:s.34]*
- (j) prescribing the types of bodies corporate which may be appointed to act as authorised depository agents under paragraph 13(2)(g);
- (k) regulating the activities of, and the standards to be maintained by, a central depository and its authorised depository agents;
- (l) *[Repealed by Act A942:s.34]*
- (m) prescribing the manner in which records shall be kept and maintained by a central depository, its authorised depository agents and its nominee companies under this Act;
- (n) prescribing the purposes for which, and the manner in which, the Commission may conduct a stock count of scrips held in custody by or in the name of, a central depository or its nominee companies;  
*[Subs. Act A942:s.34]*
- (o) prescribing all matters relating to the maintenance of insurances, and the establishment and maintenance of compensation funds, by a central depository, its nominee companies and authorised depository agents for the purpose of settling claims by depositors against them;
- (p) matters relating to the issuance of jumbo certificates under section 20;
- (q) *[Repealed by Act A942:s.34]*
- (r) prescribing the extent to which any user or class of users may have access to the computer system of a central depository;
- (s) matters relating to linkages between a central depository and other securities depositories established outside Malaysia; and
- (t) all matters or things which by this Act are required or permitted to be prescribed or which are necessary or expedient to give effect to this Act.

#### **64. Reference to allottee in the Companies Act 1965.**

For purposes of the application of the Companies Act 1965 in relation to any deposited security, a reference to an allottee in that Act shall be construed as a reference to a depositor who, by virtue of section 35 of this Act, is deemed to be a member of the company which makes the allotment.

**65. [Repealed by Act A942:s.35]**

**66. Reference to owner in section 102 of the Companies Act 1965.**

- (1) For purposes of the application of section 102 of the Companies Act 1965 in relation to any deposited security, a reference to an owner in the said section shall be construed as a reference to a central depository notwithstanding that the registration of such security in the name of the depository or its nominee company under section 18 of this Act may still be pending.
- (2) Subsection 102(2) of the Companies Act 1965 shall not apply to those certificates or documents which have already been registered in the name of the central depository or its nominee company.

**67. Reference to company in section 103 of the Companies Act 1965.**

For purposes of the application of subsection 103(3) of the Companies Act 1965 in relation to any deposited security, reference to a company in the said section shall be construed as a reference to a central depository, or an authorised depository agent, with or through whom the deceased person had a securities account.

**68. Reference to members of a public company in section 166 of the Companies Act 1965.**

For purposes of the application of paragraphs 166(1)(a) and 166(1)(c) of the Companies Act 1965, references to members of a public company in those paragraphs shall be construed as including those depositors who are deemed to be members of such company by virtue of section 35 of this Act.

## NOTES

### **Mandatory deposit by person holding undeposited securities [Act A 1039:s.29].**

- (1) Where immediately before the coming into operation of this Act, any person holds any securities which have not been deposited with a central depository licensed under the principal Act he shall, within one month from the date of the coming into operation of this Act, deposit such securities with a central depository.
- (2) After the expiry of the period specified in subsection (1), the share registrar of the issuer shall transfer to the Minister all securities which have not been deposited as required under subsection (1) by way of an entry in a securities account in the name of the Minister.
- (3) Any person whose securities are transferred under subsection (2) or 7A may, within six months from the date of the transfer, appeal to the Commission by giving reasons for his failure to deposit the securities.

*[Am. Act A1216:s.12]*

- (4) If the Commission is satisfied as to the reasons for the failure to deposit the securities, the Commission shall report its satisfaction to the Minister and the Minister shall re-transfer the securities to the person referred to in subsection (3) by way of an entry in a securities account.
- (5) If after the expiry of the period specified in subsection (3), no appeal is filed with the Commission, the Minister may sell or dispose of such securities in such manner and at such time as he thinks fit and shall deal with the proceeds of the sale or disposal as if they were moneys paid to him pursuant to the law relating to unclaimed moneys.
- (6) If any share registrar fails to transfer any securities as required under subsection (2) or 7A, the High Court shall, on the application of the Commission, make an order transferring such securities to the Minister, and such transfer shall be effected by way of an entry in a securities account in the name of the Minister who may then sell or dispose of such securities in such manner and at such time as he thinks fit and deal with the proceeds of the sale or disposal as if they were moneys paid to him pursuant to the law relating to unclaimed moneys.

*[Am. Act A1216:s.12]*

- (7) Subject to subsection (7A), the requirement under this section to deposit prescribed securities on or before the prescribed date shall not apply to such securities or class of securities as may be specified in the rules of a central depository subject to such terms and conditions as may be specified by the central depository.

*[Subs. Act A1216:s.12]*

- (7A) Where a holder of prescribed securities to whom subsection (7) applies fails to comply with any term or condition specified by the central depository, the share registrar of the issuer shall transfer to the Minister all such securities or class of securities by way of an entry in a securities account in the name of the Minister, whereupon the provisions of subsections (3), (4), (5), (6) and (8) shall apply to such securities or class of securities.

*[Ins. Act A1216:s.12]*

- (8) Any share registrar who fails to effect the transfer required under subsection (2) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding RM100,000.

**Securities account to be opened in the name of beneficial owner [Act A1039].**

- (1) Where immediately before the coming into operation of this Act, a securities account has been opened with a central depository in the name of a person other than the beneficial owner or an authorised nominee, such person shall, within one month from the date of coming into operation of this Act—
- (a) except where such beneficial owner already has an existing securities account with a central depository, apply to a central depository to open a securities account in the name of the beneficial owner of such securities; and
  - (b) apply to the central depository for the transfer of such securities to the securities account of the beneficial owner of such securities.
- (2) Any person who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding RM3 million or to imprisonment for a term not exceeding 10 years or to both.
- (3) The central depository shall on an application being made under subsection (1) cause the securities account to be opened and the transfer to be effected in accordance with such application.
- (4) After the expiry of the period specified in subsection (1), the central depository shall transfer to the Minister such securities, in a securities account by way of an entry in a securities account in the name of the Minister, which the central depository has reasons to believe are deposited in a securities account opened not in the name of the beneficial owner of the securities or an authorised nominee as required under subsection (1).
- (5) Any person whose securities are transferred under subsection (4) may, within six months from the date of the transfer, appeal to the Commission by giving reasons for his failure to deposit the securities in accordance with subsection (1).
- (6) If the Commission is satisfied as to the reasons for such failure the Commission shall report its satisfaction to the Minister and the Minister shall re-transfer the securities to the person referred to in subsection (5) by way of an entry in a securities account in accordance with subsection (1).
- (7) If after the expiry of the period specified in subsection (5), no appeal is filed with the Commission, the Minister may sell or dispose of such securities in such manner and at such time as he thinks fit and shall deal with the proceeds of the sale or disposal as if they were moneys paid to him pursuant to the law relating to unclaimed money.

*[Act A1039:s.30]*

### **Savings and transitional [Act A1216].**

- (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.

*[Act A1216:s.13]*

### **Prevention of anomalies [Act A1216].**

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.

*[Act A1216:s.14]*

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